



AUDIT FINANCIAL SERVICES

# Ordinance on Collective Investment Schemes

(Collective Investment Schemes Ordinance, CISO)

## SR **951.311**

(Status as of 1 January 2009)

Related German Version: Verordnung vom 22. November 2006 über die kollektiven Kapitalanlagen (Kollektivanlagenverordnung, KKV)

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# Ordinance on Collective Investment Schemes

## (Collective Investment Schemes Ordinance, CISO)

of 22 November 2006 (status at 1 January 2009)

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*The Swiss Federal Council,*

based upon the Federal Act on Collective Investment Schemes of 23 June 2006 (CISA; hereinafter "the Act"),

*resolves:*

## Title 1: General provisions

### Chapter 1: Object and scope

**Art. 1** Investment club  
(Art. 2 Para. 2 lit. f CISA)

Irrespective of its legal status, an investment club must meet the following requirements:

- a. The membership rights are set out in the relevant constitutive document for its chosen legal status.
- b. The members or a section of the members take the investment decisions.
- c. The members are informed about the status of the investments on a regular basis.
- d. The number of members does not exceed twenty.

**Art. 2** Investment company  
(Art. 2 Para. 3 CISA)

Newly established investment companies whose issue prospectus provides for a listing on a Swiss stock exchange are treated as equivalent to listed companies provided such listing is completed within one year.

**Art. 3** Public advertising  
(Art. 3, 5 and 19 CISA)

<sup>1</sup> Advertising is not deemed to be public if it is directed exclusively towards qualified investors as defined in Article 10 Paragraphs 3 and 4 of the Act and only the customary advertising methods for this market are used for such purpose.

<sup>2</sup> The publication of prices, net asset values and tax data in the media by foreign collective investment schemes not admitted for public sale in Switzerland shall not qualify as public advertising, provided such announcements do not contain any contact information.

<sup>3</sup> Article 3 of the Act applies to the public offering of structured products in accordance with Article 5 of the Act and the public offering or distribution of units of collective investment schemes by distributors in accordance with Article 19 of the Act.

<sup>4</sup> For structured products Paragraph 2 shall apply only accordingly.

**Art. 4**                    Structured products  
                                  (Art. 5 CISA)

<sup>1</sup> A structured product may only be offered publicly in Switzerland or from Switzerland if:

- a. it is issued, guaranteed or distributed by a regulated financial intermediary as defined in Article 5 Paragraph 1 lit. a points 1-3 of the Act;
- b. it is issued, guaranteed or distributed by a regulated financial intermediary as defined in Article 5 Paragraph 1 lit. a point 4 of the Act which has an establishment in Switzerland; the requirement to have an establishment domiciled in Switzerland shall not apply where the structured product is listed on a Swiss stock exchange, thereby ensuring transparency pursuant to Paragraph 2 and Article 5 Paragraph 2 of the Act.

<sup>2</sup> Where a structured product is not issued or guaranteed by a regulated intermediary in accordance with Article 5 Paragraph 1 lit. a of this Act, attention shall be drawn thereto in the simplified prospectus.

<sup>3</sup> The financial intermediaries specified in Article 5 Paragraph 1 lit. a of the Act shall formalize the requirements for the simplified prospectus through a system of self-regulation. This shall be approved by the Swiss Financial Market Supervisory Authority (FINMA).

<sup>4</sup> The requirement to produce a simplified prospectus shall not apply where the structured product:

- a. is listed on a Swiss stock exchange, thereby ensuring transparency pursuant to Paragraph 2 and Article 5 Paragraph 2 of the Act or
- b. is not distributed in Switzerland, but is distributed publicly from Switzerland and transparency pursuant to Article 5 Paragraph 2 of the Act is assured by virtue of foreign regulations.

## **Chapter 2: Collective investment schemes**

**Art. 5**                    Minimum number of investors  
                                  (Art. 7 Para. 3 CISA)

<sup>1</sup> Open-ended collective investment schemes are permitted in the case of a single investor if:

- a. such investor is an institution or ancillary institution in the occupational pensions sector as defined in Article 2 Paragraph 2 lit. a of the Act, is a regulated life insurance institution or a tax-exempt domestic social security institution and compensation fund;
- b. the restriction of investor eligibility to such investor as defined in a. above is disclosed in the relevant documents in accordance with Article 15 Paragraph 1 of the Act.

<sup>2</sup> FINMA may:

- a. extend the scope of qualification given in Paragraph 1 lit. a;
- b. make its approval or authorization of the collective investment scheme in relation to a single investor dependent on further conditions.

<sup>3</sup> In the case of a limited partnership for collective investment, at least five limited partners must be invested at the latest one year after its launch.

**Art. 6** Qualified investors

(Art. 10 Para. 3 lit. e and Para. 4 CISA)

<sup>1</sup> A high-net-worth individual shall qualify provided that he or she confirms in writing to a regulated financial intermediary in accordance with Article 10 Paragraphs 3 lit. a and b of the Act, or to an independent asset manager in accordance with Paragraph 2, that he or she either directly or indirectly holds financial investments of at least two million Swiss francs at the time of purchase.

<sup>2</sup> Investors who have concluded a written discretionary management agreement with an independent asset manager are deemed to be qualified provided that:

- a. such asset manager, in its capacity as a financial intermediary, is governed by the Money Laundering Act of 10 October 1997 (Art. 2 Para. 3 lit. e MLA);
- b. such asset manager is governed by the code of conduct employed by a specific industry body, such code of conduct being recognized by FINMA as the minimum standard; and
- c. such discretionary management agreement complies with the recognized standards of a specific industry body.

## Chapter 3: Authorization and approval

### Section 1: General

**Art. 7** Authorization documentation

(Art. 13 and 14 CISA)

Any party applying for authorization in accordance with Article 13 of the Act must submit the following documents to FINMA:

- a. the articles of association and the organizational regulations in the case of a fund management company, a SICAV and a SICAF;
- b. the company agreement in the case of a limited partnership for collective investment;
- c. the relevant organizational documents in the case of an asset manager, a representative of foreign collective investment schemes and a distributor.

**Art. 8** Exemptions from the authorization requirements

(Art. 13 Para. 3 and 19 Para. 4 CISA)

<sup>1</sup> Any party authorized as a fund management company, as a bank pursuant to the Federal Act on Banks and Savings Institutions of 8 November 1934, as a securities dealer pursuant to the Stock Exchange Act of 24 March 1995 or as an insurance institution pursuant to the Federal Act on the Supervision of Insurance Companies of 17 December 2004, is exempted from the duty to obtain authorization for asset managers, for representatives of foreign collective investment schemes and for distributors.

<sup>2</sup> Any party authorized as an asset manager is exempted from the duty to obtain authorization as representative of foreign collective investment schemes or as distributor.

<sup>3</sup> Swiss Post and representatives of foreign collective investment schemes are exempted from the duty to obtain authorization for distributors.

<sup>4</sup> Agents of insurance institutions which are integrated legally and de facto into the organization of the insurance institution on a legal or constructive basis by virtue of the agency agreement shall not be subject to the duty to obtain authorization for distributors. FINMA regulates the details.

**Art. 9** Asset managers of foreign collective investment schemes  
(Art. 13 Para. 4 CISA)

The provisions of this chapter shall apply accordingly to the asset managers of foreign collective investment schemes which apply to FINMA for authorization.

**Art. 10** Good reputation, guarantees and professional qualifications  
(Art. 14 Para. 1 lit. a CISA)

<sup>1</sup> The persons responsible for the management and business operations shall be suitably qualified for the intended activity on the basis of their education and training, experience and career history.

<sup>2</sup> FINMA determines the requirements for furnishing evidence of good reputation, the guaranteeing of proper management and the possession of the requisite professional qualifications.

<sup>3</sup> In assessing these requirements it also takes into account the intended activity on behalf of the licensee, together with the nature of the intended investments.

<sup>4</sup> In justified individual instances it may grant derogations from these requirements.

**Art. 11** Significant equity holders  
(Art. 14 Para. 1 lit. b and Para. 3 CISA)

FINMA specifies the requirements for the furnishing of evidence of the good reputation of significant equity holders. Furthermore, it specifies the requirements for the furnishing of evidence that such significant equity holders cannot exert their influence to the detriment of prudent and sound business practice.

**Art. 12** Organizational structure  
(Art. 14 Para. 1 lit. c CISA)

<sup>1</sup> The executive board must comprise at least two persons. Such persons shall have their domicile at a location which is suitable for the proper managing of the business operations.

<sup>2</sup> The authorized signatories of the licensee must sign jointly.

<sup>3</sup> The licensee shall ensure it has a proper and appropriate organizational structure, in particular with respect to risk management, the internal control system (ICS) and compliance. It shall define its organizational structure in a set of organizational regulations.

<sup>4</sup> It shall employ personnel who are properly and suitably qualified for its activity.

<sup>5</sup> FINMA may require that an internal audit be performed if required by the scope and nature of the activity.

<sup>6</sup> In justified instances it may grant derogations from these requirements.

**Art. 13** Financial guarantees  
(Art. 14 Para. 1 lit. d CISA)

The licensee shall be deemed to have sufficient financial guarantees if it meets the relevant provisions regarding the minimum capital or minimum investment amount.

**Art. 14** Change of organizational structure and documents  
(Art. 16 CISA)

<sup>1</sup> In the event of changes to the organizational structure, authorization must be obtained from FINMA. The documents defined in Article 7 must be submitted to FINMA for approval.

<sup>2</sup> Changes to documents in accordance with Article 15 of the Act must be submitted to FINMA, with the exception of:

- a. the relevant documents of foreign collective investment schemes;
- b. any change in the total limited partner's contributions in the company agreement of the limited partnership for collective investment.

**Art. 15** Duty to report  
(Art. 16 CISA)

<sup>1</sup> The licensees, with the exception of the custodian bank, shall report:

- a. any change in the persons responsible for the management and the business operations;
- b. facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations, specifically the instigation of criminal proceedings against them;
- c. any change in significant equity holders, except for investor shareholders in a SICAV and limited partners in a limited partnership for collective investment;
- d. facts which might call into question the good reputation of significant equity holders, specifically the instigation of criminal proceedings against them;
- e. facts which call into question the prudent and sound business practice of the licensees owing to the influence of the significant equity holders;
- f. any change with respect to the financial guarantees (Art. 13), in particular if the minimum requirements are no longer met.

<sup>2</sup> The custodian bank shall report any change of executive persons entrusted with the performance of the custodian bank's duties (Art. 72 Para. 2 CISA).

<sup>3</sup> Furthermore, amendments to the prospectus and the simplified prospectus of an investment fund, a SICAV, a limited partnership for collective investment and a SICAF shall also be reported.

<sup>4</sup> The representatives of foreign collective investment schemes shall in addition report:

- a. measures taken by a foreign supervisory authority against the collective investment scheme, specifically its withdrawal of approval;

- b. any amendments to documents of foreign collective investment schemes in accordance with Article 15 Paragraph 1 lit. e of the Act;
- c. the termination of representative agreements.

<sup>5</sup> FINMA shall be notified forthwith. It shall examine any such changes in respect of their compliance with the Act.

**Art. 16** Conditions for the simplified approval procedure  
(Art. 17 CISA)

<sup>1</sup> The simplified approval procedure may only be adopted where the fund regulations:

- a. comply with a format which FINMA has recognized as being the minimum standard, such as model regulations and prospectuses of a specific industry body; or
- b. comply with a set of standards which FINMA has recognized as binding in relation to the relevant licensee.

<sup>2</sup> FINMA shall give the applicant confirmation of its receipt of the application.

<sup>3</sup> Where additional information is required for the purpose of assessing the application, FINMA may instruct the applicant to submit such information at a subsequent time.

**Art. 17** Time limits for the simplified approval procedure  
(Art. 17 CISA)

<sup>1</sup> Open-ended collective investment schemes for qualified investors are deemed to have been approved after expiration of the following time limits:

- a. securities funds, real estate funds and other funds for traditional investments: following receipt of the application;
- b. other funds for alternative investments: four weeks following receipt of the application.

<sup>2</sup> FINMA shall approve open-ended collective investment schemes which are directed towards the public at the latest within the following time limits:

- a. securities funds: four weeks following receipt of the application;
- b. real estate funds and other funds for traditional investments: six weeks following receipt of the application;
- c. other funds for alternative investments: eight weeks following receipt of the application.

<sup>3</sup> The period shall commence one day following receipt of the application.

<sup>4</sup> Where FINMA requires further information, the commencement of the period shall be postponed from the time the request is made until such time as the information is received by FINMA.

**Art. 18** Subsequent amendment of documents  
(Art. 17 CISA)

<sup>1</sup> FINMA may demand that a subsequent amendment be made to the documents for collective investment schemes for qualified investors for a period of up to three months following simplified approval.

<sup>2</sup> The investors:

- a. shall be made aware of the possibility of an amendment in advance;
- b. shall be informed of subsequent amendments in the media of publication.

## **Section 2      Conditions of authorization for asset managers of Swiss collective investment schemes**

**Art. 19**            Minimum capital and furnishing of collateral  
(Art. 14 Para. 1 lit. d and 18 Para. 3 CISA)

<sup>1</sup> Asset managers shall have a minimum capital of 200,000 Swiss francs, to be paid up in cash.

<sup>2</sup> In place of the minimum capital, FINMA may permit natural persons and partnerships to provide collateral in the form of a bank guarantee or cash deposit on a blocked account held with a bank, for instance, such collateral to amount to at least 200,000 Swiss francs.

<sup>3</sup> In justified individual instances it may stipulate a different minimum amount.

<sup>4</sup> Such minimum capital shall be maintained at all times.

**Art. 20**            Components of capital  
(Art. 14 Para. 1 lit. d and 18 Para. 3 CISA)

<sup>1</sup> In the case of a corporation and a partnership limited by shares, the capital shall be the share and participation capital, and in the case of a company with limited liability it shall be the issued capital.

<sup>2</sup> In the case of natural persons and partnerships, the capital shall be:

- a. the capital accounts;
- b. the partnership contributions; and
- c. the assets of the partners with unlimited liability.

<sup>3</sup> The capital accounts and the assets of the partners with unlimited liability may only be ascribed to the capital if an irrevocable written declaration deposited with an audit firm provides evidence that:

- a. in the event of liquidation, bankruptcy or administration proceedings such assets shall be subordinated to the claims of all other creditors; and
- b. the asset manager commits itself not to:
  1. net such assets with its own claims nor secure them from its own assets,
  2. reduce any of the components of the capital as defined in Paragraph 2 lit. a and c to the extent that the minimum capital is no longer maintained, without the prior consent of the audit firm.

**Art. 21**            Level of capital adequacy  
(Art. 14 Para. 1 lit. d CISA)

<sup>1</sup> Asset managers shall provide evidence of capital adequacy representing at least one

quarter of their fixed costs in accordance with the most recent annual financial statement. The maximum requirement shall be 20 million Swiss francs, however.

<sup>2</sup> The following are deemed to be fixed costs:

- a. personnel expenses;
- b. operating expenses (overheads);
- c. depreciation of investment assets;
- d. expense for allowances, provisions and losses.

<sup>3</sup> The portion of personnel expenses which are exclusively dependent on the business result or in relation to which no legal entitlement exists shall be deducted from the relevant item under Paragraph 2 lit. a.

<sup>4</sup> The prescribed capital adequacy shall be maintained at all times.

<sup>5</sup> Asset managers shall notify FINMA of capital inadequacy forthwith.

**Art. 22**                      Qualifying capital  
(Art. 14 Para. 1 lit. d CISA)

<sup>1</sup> Legal persons may include the following in qualifying capital:

- a. the paid-up share and participation capital in the case of a corporation and partnership limited by shares, and the issued capital in the case of a company with limited liability;
- b. the general statutory reserve and other reserves;
- c. retained earnings;
- d. the net profit for the current financial year after deducting the estimated earnings distribution, provided an audited interim financial statement including full income statement is available;
- e. hidden reserves, provided they are assigned to a separate account and designated as own funds. Their allowability shall be confirmed in the auditors' report.

<sup>2</sup> Natural persons and partnerships may include the following in qualifying capital:

- a. the capital accounts;
- b. the partnership contributions;
- c. the collateral as defined in Article 19 Paragraph 2;
- d. the funds of the partners with unlimited liability, provided the conditions stated in Article 20 Paragraph 3 are met.

<sup>3</sup> For asset managers, any loans granted to them including bonds with a maturity of at least five years may be included in qualifying capital if an irrevocable written declaration deposited with an audit firm provides evidence that:

- a. in the event of liquidation, bankruptcy or administration proceedings such loans shall be subordinate to the claims of all other creditors; and
- b. they have committed themselves not to net the loans with their claims nor secure them from their own assets.

<sup>4</sup> The qualifying capital as defined in Paragraphs 1 and 2 lit. a–d shall account for at least 50 percent of the total required.

**Art. 23** Deductions in relation to the calculation of qualifying capital  
(Art. 14 Para. 1 lit. d CISA)

The following shall be deducted when calculating capital adequacy:

- a. the loss carried forward and the loss for the current financial year;
- b. any unsecured allowance and provision for the current financial year;
- c. in the case of loans, repayment of the original nominal amount of 20 percent per year for the last five years in accordance with Article 22 Paragraph 3;
- d. intangible assets (including start-up and organizational costs as well as goodwill) with the exception of software;
- e. in the case of a corporation and partnership limited by shares, the shares which they hold in the company at their own risk;
- f. in the case of a company with limited liability, the capital contribution which it holds in the company at its own risk;
- g. the carrying amount of investments, unless a consolidation is performed in accordance with Article 29.

**Art. 24** Description of the area of business (Art. 18 Para. 3 CISA)

<sup>1</sup> Asset managers shall describe their area of business in factually and geographically precise terms in the articles of association, the company agreements or the organizational regulations.

<sup>2</sup> Where they wish to operate a subsidiary, a branch or a representative office abroad, they shall provide FINMA with all the information which the latter requires for the assessment of the duties, specifically:

- a. name and address of the subsidiary, branch or representative office;
- b. the names of the persons entrusted with the management and the business operations;
- c. the audit firm;
- d. name and address of FINMA in the foreign country of domicile.

<sup>3</sup> They shall notify FINMA forthwith of any material change in relation to their subsidiaries, branches or representative offices abroad.

**Art. 25** Agreement  
(Art. 18 Para. 3 CISA)

Asset managers shall conclude a written agreement with their asset management clients, such agreement to govern the respective rights and obligations as well as other material matters.

**Art. 26** Delegation of activities  
(Art. 18 Para. 3 CISA)

<sup>1</sup> Asset managers may delegate specific tasks, provided this is in the interests of efficient management.

<sup>2</sup> They shall commission only those persons who are properly qualified to execute such task, and ensure the instruction, monitoring and control necessary with respect to implementation of the tasks assigned.

**Art. 27** Standards of industry bodies  
(Art. 14 Para. 2 and 18 Para. 3 CISA)

FINMA may make its granting of authorization dependent on the asset manager's compliance with the code of conduct of a specific industry body.

**Art. 28** Accounting  
(Art. 18 Para. 3 CISA)

<sup>1</sup> Irrespective of their legal status, asset managers shall apply the accounting standards of the Code of Obligations (CO) as they relate to the corporation.

<sup>2</sup> Where the asset managers are subject to specific, more stringent accounting standards, such regulations shall take precedence.

**Art. 29** Consolidation  
(Art. 18 Para. 3 CISA)

FINMA may declare that the provisions of the Federal Act on Banks and Savings Institutions regarding financial groups and financial conglomerates shall apply accordingly.

### **Section 3: Conditions of authorization for distributors**

**Art. 30** Authorization conditions  
(Art. 3 and 19 Para. 2 CISA)

<sup>1</sup> FINMA grants authorization to a natural person who wishes to offer or distribute units of a collective investment scheme to the public where such person can provide evidence of:

- a. the conclusion of professional indemnity insurance appropriate to his or her business activities amounting to at least 250,000 Swiss francs, such insurance to cover his or her activity as a distributor, or the depositing of an appropriate deposit of the same amount;
- b. permitted procedural details in relation to distribution; and
- c. a written distribution agreement with the fund management company, the SICAV, the limited partnership for collective investment or the SICAF, or the representative of a foreign collective investment scheme, under which agreement such person is expressly prohibited from receiving payments for the purchase of units.

<sup>2</sup> It grants authorization to legal persons and competent partnerships if they or the persons holding executive powers meet the requirements as stated in Paragraph 1.

<sup>3</sup> It may also make its granting of authorization dependent on the distributor's compliance with the relevant standards of a specific industry body.

## Chapter 4: Code of conduct

### **Art. 31** Duty of loyalty (Art. 20 Para. 1 lit. a CISA)

<sup>1</sup> The licensees and their agents may only purchase investments from collective investment schemes for their own account at the market price and may only sell such investments from their own portfolios at the market price.

<sup>2</sup> In relation to services delegated to third parties they shall waive the compensation owed to them in accordance with the fund regulations, company agreement, investment regulations or discretionary management agreement where such compensation is not used for payment of the services rendered by such third parties.

<sup>3</sup> Where investments of a collective investment scheme are transferred to another scheme of the same licensee or a scheme belonging to a closely related licensee, no costs may be levied.

<sup>4</sup> The licensees may not levy any issue or redemption fees if they purchase target funds which:

- a. they manage themselves either directly or indirectly; or
- b. are managed by a company with which they are related by virtue of:
  1. common management,
  2. control, or
  3. a material direct or indirect participation.

<sup>5</sup> For the instigation of an administration commission with regard to investments in target funds pursuant to Paragraph 4, Article 73 Paragraph 4 applies accordingly.

<sup>6</sup> FINMA regulates the details. It may declare that Paragraphs 4 and 5 shall also apply to other products.

### **Art. 32** Special duty of loyalty in relation to real estate investments (Art. 20 Para. 1 lit. a, 21 Para. 3 and 63 CISA)

<sup>1</sup> The fees payable to closely related natural or legal persons which participate in the planning, construction, purchasing or sale of a building for the account of the collective investment scheme shall be calculated by the licensees exclusively on the basis of the normal prices prevailing in the sector.

<sup>2</sup> The valuation expert shall check the fee invoice prior to settlement thereof and if necessary furnish the licensee and the audit firm with a report.

### **Art. 33** Due diligence (Art. 20 Para. 1 lit. b CISA)

<sup>1</sup> The licensees shall ensure the effective separation of the activities of decision-making (asset management), implementation (trading and settlement) and administration.

<sup>2</sup> FINMA may in justified individual instances permit exemptions or order the separation of additional functions.

**Art. 34** Duty to provide information  
(Art. 20 Para. 1 lit. c and 23 CISA)

<sup>1</sup> The licensees shall draw investors' attention to the risks associated with a specific type of investing in particular.

<sup>2</sup> They shall disclose all costs incurred upon the issue and redemption of units and in the administration of the collective investment scheme. In addition, they shall disclose the manner in which the management fee is utilized and the levying of any performance fee.

<sup>3</sup> They shall ensure a degree of transparency in relation to the exercising of membership and creditors' rights such that investors are in a position to comprehend the manner in which such rights are exercised.

## **Title 2: Open-ended collective investment schemes**

### **Chapter 1: Contractual fund**

#### **Section 1: Minimum assets** (Art. 25 Para. 3 CISA)

**Art. 35**

<sup>1</sup> The investment fund or the subfund of an umbrella fund shall be issued for subscription (launch) within one year following approval by FINMA.

<sup>2</sup> The investment fund or subfund of an umbrella fund shall have net assets of at least 5 million Swiss francs at the latest one year following its launch.

<sup>3</sup> FINMA may extend the time limits for a corresponding application.

<sup>4</sup> Following expiration of the time period as defined in Paragraphs 2 and 3, the fund management company shall notify FINMA of any shortfall forthwith.

#### **Section 2: Fund contract**

**Art. 36** Investment policy guidelines  
(Art. 26 Para. 3 lit. b CISA)

<sup>1</sup> The fund contract sets out the permitted investments:

- a. by type (equity securities, debt securities, derivative instruments, residential property, commercial properties; precious metals; commodities etc.);
- b. by country, geographical region, sector or currency.

<sup>2</sup> For other funds as defined in Article 68 et seq. of the Act, it shall also set out corresponding information on the special features and risks of the respective investments in terms of their characteristics and valuation.

<sup>3</sup> The fund contract sets out the permitted investment techniques and instruments.

**Art. 37** Issue and redemption price; supplementary charges and deductions  
(Art. 26 Para. 3 lit. c CISA)

<sup>1</sup> Supplements to, and deductions from, the net asset value shall be listed individually in the fund contract, specifically:

- a. fees payable to the fund management company, the custodian bank and third parties for distribution in Switzerland and abroad, such as issue and redemption fees;
- b. all-in incidental costs incurred by the issue and redemption of units for the purchase and sale of investments (Art. 38 Para. 2), where such costs are charged to the investor.

<sup>2</sup> The incidental costs may only be charged to the fund assets if such provision is made in the fund contract.

**Art. 38** Fees and incidental costs  
(Art. 26 Para. 3 lit. e CISA)

<sup>1</sup> Fees include in particular:

- a. issue and redemption fees;
- b. management fees including performance fees;
- c. reimbursement of specific admissible expenses.

<sup>2</sup> Incidental costs include in particular:

- a. brokers' fees;
- b. charges;
- c. notary expenses;
- d. real estate transfer tax in the case of real estate funds;
- e. sales commissions payable to third parties;
- f. taxes and duties;
- g. other expenses not incurred by the management of the investments.

<sup>3</sup> The fund contract sets out the fees and incidental costs in a single section, and provides a breakdown by type, maximum amount and calculation.

<sup>4</sup> Use of the term "all-in fee" is only permissible if this includes all fees (excluding issue and redemption fees) including incidental costs. If the term "flat fee" is used, specific information shall be provided in relation to which fees and incidental costs it does not include.

<sup>5</sup> The fund contract commits the fund management company to disclosing the intended use of the management fee in the prospectus.

<sup>6</sup> Reimbursements and distributor fees may only be paid out of the management fees where specific provision has been made in the fund contract.

**Art. 39** Media of publication  
(Art. 26 Para. 3 lit. h CISA)

<sup>1</sup> The media of publication of the investment fund are deemed to be the print media specified in the prospectus or those publicly accessible electronic platforms recognized by

FINMA by means of which investors may obtain the information which is required under the Act and the present Ordinance.

<sup>2</sup> All facts which are subject to the publication requirement, and in relation to which investors are entitled to lodge objections with FINMA, in addition to the dissolution of an investment fund, shall be published in the media of publication intended for such purpose.

**Art. 40** Unit classes  
(Art. 26 Para. 3 lit. k and 78 Para. 3 CISA)

<sup>1</sup> The fund management company may create, liquidate or merge unit classes subject to the consent of the custodian bank and the approval of FINMA. In doing so it shall address the following specific criteria: cost structure, reference currency, currency hedging, distribution or reinvestment of income, minimum investment or investor eligibility.

<sup>2</sup> The procedural details shall be set out in the prospectus. The risk that a class may be liable for another class must be specifically disclosed in the prospectus.

<sup>3</sup> The fund management company announces the creation, dissolution or merging of unit classes in the media of publication. Only a merger is deemed to be an amendment to the fund contract, and is governed by Article 27 of the Act.

<sup>4</sup> Article 112 Paragraph 3 lit. a-c shall apply accordingly.

**Art. 41** Amendments to the fund contract; duty to publish, time limit for lodging objections, entry into force and cash repayments  
(Art. 27 Para. 2 and 3 CISA)

<sup>1</sup> The fund management company shall publish any amendment to the fund contract in the media of publication of the relevant fund in the form specified by the Act. FINMA may exempt therefrom amendments that are required by law, provided such amendments do not affect the rights of investors or are of an exclusively formal nature.

<sup>2</sup> The period in which objections to the amendment of the fund contract may be lodged commences on the day following announcement in the media of publication.

<sup>3</sup> In its decision FINMA specifies the date on which the amendment to the fund contract enters into force.

### **Section 3: The fund management company**

**Art. 42** Main administrative office in Switzerland  
(Art. 28 Para. 1 CISA)

The main administrative office of the fund management company is located in Switzerland if:

- a. the inalienable and non-transferable tasks of the board of directors in accordance with Article 716a of the Code of Obligations; and
- b. in relation to each of the investment funds it manages, at least the following tasks are performed in Switzerland:
  - 1 deciding on the issue of units;
  - 2 deciding on the investment policy and valuation of the assets;
  - 3 valuation of the assets;

- 4 determining the issue and redemption prices;
- 5 determining the profit allocation;
- 6 determining the contents of the prospectus, the simplified prospectus, the annual and semiannual report as well as other publications intended for investors; and
- 7 fund accounting

**Art. 43** Minimum capital  
(Art. 28 Para. 2 CISA)

The fund management company shall have share capital of at least one million Swiss francs, to be paid up in cash.

**Art. 44** Organization  
(Art. 28 Para. 4 CISA)

<sup>1</sup> The board of directors of the fund management company comprises at least three members.

<sup>2</sup> The fund management company generally has at least three full-time employees with signatory powers.

**Art. 45** Independence  
(Art. 28 Para. 5 CISA)

<sup>1</sup> Simultaneous membership of the board of directors of the fund management company and board of directors of the custodian bank is permitted.

<sup>2</sup> Simultaneous membership of the executive board of the fund management company and executive board of the custodian bank is not permitted.

<sup>3</sup> A majority of the members of the board of directors of the fund management company must be independent of those persons entrusted by the custodian bank with tasks in accordance with Article 73 of the Act. The persons entrusted by the custodian bank at executive board level with tasks in accordance with Article 73 of the Act are not deemed to be independent.

<sup>4</sup> None of the persons vested with signatory powers on behalf of the fund management company may at the same time be responsible for custodian bank duties as per Article 73 of the Act.

**Art. 46** Conduct of fund business  
(Art. 29 CISA)

<sup>1</sup> In addition to the tasks set out in Article 30 of the Act, the fund business specifically includes:

- a. the representation of foreign collective investment schemes;
- b. the acquisition of interests in companies whose primary object is the collective investment scheme business;
- c. the management of unit accounts;
- d. the distribution of collective investment schemes;
- e. the rendering of administrative services for collective investment schemes and similar

investment vehicles such as in-house funds, investment foundations and investment companies.

<sup>2</sup> Such activities, in addition to the other services set out in Article 29 of the Act may only be performed by the fund management company where provided by the articles of association.

<sup>3</sup> FINMA regulates the details.

**Art. 47** Capital adequacy  
(Art. 32 CISA)

In relation to the qualifying capital, Articles 22 and 23 shall apply accordingly.

**Art. 48** Level of capital adequacy  
(Art. 32 Para. 1 CISA)

<sup>1</sup> The required capital adequacy shall never exceed 20 million Swiss francs.

<sup>2</sup> It is calculated as a percentage of the total assets of the collective investment scheme managed by the fund management company in the following manner:

- a. 1 percent for that portion not exceeding 50 million Swiss francs;
- b.  $\frac{3}{4}$  percent for that portion exceeding 50 million but not exceeding 100 million Swiss francs;
- c.  $\frac{1}{2}$  percent for that portion exceeding 100 million but not exceeding 150 million Swiss francs;
- d.  $\frac{1}{4}$  percent for that portion exceeding 150 million but not exceeding 250 million Swiss francs;
- e.  $\frac{1}{8}$  percent for that portion exceeding 250 million Swiss francs.

<sup>3</sup> Where the fund management company renders ancillary services in accordance with Article 29 of the Act, the operational risks arising from such transactions are subject to the basic indicator approach as defined in Article 80 of the Capital Adequacy Ordinance (CAO) of 29 September 2006.

<sup>4</sup> If the fund management company is entrusted with the administration of the assets of a SICAV pursuant to Article 51 Paragraph 5 of the Act, its total assets must be included in the calculation of its capital adequacy in accordance with Paragraph 2.

<sup>5</sup> The fund management company deducts the carrying amount of its participating interests from the capital adequacy.

<sup>6</sup> The prescribed capital adequacy shall be maintained at all times.

<sup>7</sup> The fund management company notifies FINMA of capital inadequacy forthwith.

**Art. 49** Annual business report

<sup>1</sup> The fund management company submits its own annual business report to FINMA within ten days following its approval by the general meeting of shareholders.

<sup>2</sup> Together with the annual business report it encloses a breakdown of the prescribed and actual capital adequacy as per the balance sheet date.

<sup>3</sup> The preparation and format of the annual financial statements are governed by the relevant provisions of the Code of Obligations.

**Art. 50** Change of fund management company; time limit for lodging objections, entry into force and cash repayments (Art. 34 Para. 3, 4 and 6 CISA)

<sup>1</sup> In relation to a change of fund management company, Article 41 shall apply accordingly.

<sup>2</sup> The merging of fund management companies or developments which are tantamount to a merger are deemed to be a change pursuant to Article 34 of the Act.

## Chapter 2: Investment company with variable capital

### Section 1: General provisions

**Art. 51** Definition  
(Art. 36 Para. 1 CISA)

<sup>1</sup> The self-managed SICAV performs its own administration.

<sup>2</sup> The externally managed SICAV delegates administration in accordance with Article 51 Paragraph 5 of the Act.

<sup>3</sup> Subject to the provisions of Article 64.

**Art. 52** Object  
(Art. 36 Para. 1 lit. d CISA)

A SICAV may only manage its own assets or those of its subfunds. It shall be specifically prohibited from rendering services pursuant to Article 29 of the Act on behalf of third parties.

**Art. 53** Minimum assets  
(Art. 36 Para. 2 CISA)

In relation to the minimum assets of a SICAV, Article 35 shall apply accordingly.

**Art. 54** Minimum investment amount  
(Art. 37 Para. 2 and 3 CISA)

<sup>1</sup> In respect of a self-managed SICAV, company shareholders must provide a minimum investment amount of 500,000 Swiss francs upon its formation.

<sup>2</sup> In respect of an externally managed SICAV, they must provide a minimum investment amount of 250,000 Swiss francs upon its formation.

<sup>3</sup> The minimum investment amount shall be maintained at all times.

<sup>4</sup> A SICAV shall notify FINMA of any shortfall forthwith.

**Art. 55** Definition and level of capital adequacy  
(Art. 39 CISA)

<sup>1</sup> The holdings provided by the company shareholders are included in the capital.

<sup>2</sup> The following shall be deducted from the capital:

- a. the balance sheet loss attributable to the company shareholders;

- b. the allowances and provisions attributable to the company shareholders;
- c. intangible assets (including start-up and organizational costs as well as goodwill) with the exception of software.

<sup>3</sup> The self-managed SICAV calculates the requisite level of capital adequacy in accordance with Article 48.

<sup>4</sup> The externally managed SICAV may not include its own resources in the assets (Art. 48 Para. 4).

<sup>5</sup> The prescribed ratio between the equity and total assets of the self-managed SICAV shall be maintained at all times.

<sup>6</sup> A SICAV shall notify FINMA of capital inadequacy forthwith.

<sup>7</sup> FINMA regulates the details.

**Art. 56** Net issue price at time of initial issue  
(Art. 40 Para. 4 CISA)

All shares have the same net issue price at the time of initial issue of their category, irrespective of whether they belong to different categories. This represents the issue price payable by the investors at the time of issue less any fees and incidental costs.

**Art. 57** Dissolution of subfunds  
(Art. 41 Para. 2 CISA)

The company shareholders may decide to dissolve subfunds.

**Art. 58** Issue and redemption of shares  
(Art. 42 Para. 1 and 3 CISA)

<sup>1</sup> Articles 37 and 38 shall apply accordingly.

<sup>2</sup> Company shareholders may redeem their shares if:

- a. the appropriate ratio between holdings of the company shareholders and total assets of the SICAV is maintained even after redemption; and
- b. the minimum investment amount is maintained.

**Art. 59** Investment in treasury shares  
(Art. 42 Para. 2 and 94 CISA)

Investments by a subfund in other subfunds of the same SICAV do not constitute an investment in treasury shares.

**Art. 60** Media of publication  
(Art. 43 Para. 1 lit. f CISA)

Article 39 shall apply accordingly.

**Art. 61** SICAV with unit classes  
(Art. 40 Para. 4 and 78 Para. 3 CISA)

<sup>1</sup> Where provided by the articles of association, a SICAV may create, dissolve or merge unit classes with the approval of FINMA.

<sup>2</sup> Article 40 shall apply accordingly. The merger requires the approval of the general meeting of shareholders.

<sup>3</sup> The risk that a unit class may be liable for another class must be disclosed in the prospectus.

**Art. 62**                    Voting rights  
(Art. 40 Para. 4, 47 and 94 CISA)

<sup>1</sup> Shareholders have voting rights in respect of:

- a. the subfund in which they are invested;
- b. the company if the decision affects the SICAV as a whole.

<sup>2</sup> If the share of voting rights assigned to a subfund differs significantly from the share of assets assigned to such subfund, the shareholders may at the general meeting resolve to split or merge the shares of a share category in accordance with Paragraph 1 lit. b. FINMA must give its consent for such decision to be valid.

<sup>3</sup> FINMA may order the splitting or merging of shares in a share class.

## **Section 2:    Organization**

**Art. 63**                    General meeting  
(Art. 50 and 94 CISA)

<sup>1</sup> The articles of association may provide for general meetings in respect of individual subfunds where decisions are involved which affect only such subfunds.

<sup>2</sup> Shareholders which together hold at least 10 percent of the votes of all or some subfunds may request that items be included on the agenda for discussion at the general meeting of the SICAV or subfund.

<sup>3</sup> The general meeting of the SICAV or subfunds is responsible for amending the investment regulations provided such amendment:

- a. is not required by law;
- b. affects the rights of shareholders; or
- c. is not of an exclusively formal nature.

<sup>4</sup> In the media of publication, the SICAV publishes the material amendments to the fund regulations resolved by the general meeting and approved by FINMA, indicating the offices from which the amended wording may be obtained free of charge.

<sup>5</sup> The provision on the important resolutions of the general meeting of a corporation (Art. 704 CO) does not apply.

**Art. 64**                    Board of directors  
(Art. 51 CISA)

<sup>1</sup> The board of directors has the following tasks:

- a. performing the duties required under Article 716a of the Code of Obligations;
- b. determining the principles of the investment policy;

- c. appointing the custodian bank;
- d. creating new subfunds, where provided by the articles of association;
- e. drawing up the prospectus and the simplified prospectus;
- f. administration.

<sup>2</sup> The tasks laid down in Paragraph 1 lit. a-c may not be delegated.

<sup>3</sup> In a self-managed SICAV, the tasks defined in Paragraph 1 lit. d and e, in addition to the administrative sub-tasks defined in Paragraph 1 lit. f, specifically risk management, the structuring of the internal control system (ICS) and compliance, may only be delegated to the executive board.

<sup>4</sup> In relation to the organizational structure of a self-managed SICAV, Articles 44 and 45 shall apply accordingly.

**Art. 65** Delegation of administration  
(Art. 51 Para. 5 CISA)

<sup>1</sup> If the board of directors appoints a fund management company to execute the administration of the SICAV, the rights and responsibilities of the contracting parties must be described in a written contract, to include specifically:

- a. the tasks conferred;
- b. any powers for further delegation;
- c. the accountability of the fund management company;
- d. the inspection rights of the board of directors.

<sup>2</sup> FINMA regulates the details.

**Art. 66** Delegation of tasks

In relation to the delegation of tasks, Article 31 Paragraphs 1–4 of the Act shall apply accordingly.

## **Chapter 3: Types of open-ended collective investment schemes and investment provisions**

### **Section 1: General provisions**

**Art. 67** Compliance with investment provisions  
(Art. 53 et seq. CISA)

<sup>1</sup> Unless specified otherwise, the percentage restrictions given in this chapter relate to the fund assets at market values; they shall be maintained at all times.

<sup>2</sup> If the limits are exceeded as a result of market changes, the investments shall be restored to the permitted level within a reasonable period, taking due account of the investors' interests.

<sup>3</sup> Securities funds and other funds shall comply with the investment restrictions within six months of launch.

<sup>4</sup> Real estate funds shall comply with the investment restrictions within two years of launch.

<sup>5</sup> FINMA may extend the time limits specified in Paragraphs 3 and 4 upon the request of the fund management company and the SICAV.

**Art. 68**                      Subsidiary companies and permitted investments  
(Art. 53 et seq. CISA)

<sup>1</sup> With regard to the administration of collective investment schemes, the fund management company and the SICAV may deploy subsidiaries whose sole object is the holding of assets for collective investment schemes. FINMA regulates the details.

<sup>2</sup> A SICAV may acquire movable and non-movable assets which are essential for the direct performance of its operations. FINMA regulates the details.

**Art. 69**                      Umbrella funds  
(Art. 92 et seq. CISA)

<sup>1</sup> Umbrella funds may only comprise subfunds of the same type.

<sup>2</sup> The following types of fund qualify:

- a. securities funds;
- b. real estate funds;
- c. other funds for traditional investments;
- d. other funds for alternative investments.

<sup>3</sup> In the case of collective investment schemes which include subfunds, the investment restrictions and techniques for each individual subfund shall apply.

## **Section 2:   Securities funds**

**Art. 70**                      Permitted investments  
(Art. 54 Para. 1 and 2 CISA)

<sup>1</sup> The following investments are permitted:

- a. securities in accordance with Article 71;
- b. derivative financial instruments in accordance with Article 72;
- c. units in collective investment schemes which comply with the requirements specified in Article 73;
- d. money market instruments as specified in Article 74;
- e. sight and time deposits with a term to maturity not exceeding twelve months held with banks domiciled in Switzerland or in a member state of the European Union or in another country provided that the bank is subject to supervision in that country which is equivalent to the standard of supervision in Switzerland.

<sup>2</sup> The following are not permitted:

- a. investments in precious metals or precious metals certificates, commodities or commodity certificates;
- b. short selling of investments in accordance with Paragraph 1 lit. a-d.

<sup>3</sup> Investments in assets other than those named in Paragraph 1 may not exceed 10 percent of the fund's total assets.

<sup>4</sup> A fund management company which also offers personalized asset management in accordance with Article 29 lit. a of the Act may not invest the investor's assets, whether in full or in part, in units of the collective investment scheme that it manages, unless the client has given his or her general consent beforehand.

**Art. 71** Securities  
(Art. 54 CISA)

<sup>1</sup> Securities are deemed to be equity or debt securities pursuant to Article 54 Paragraph 1 of the Act which embody rights of participation or claim or the right to acquire such securities and rights by way of subscription or exchange, specifically warrants.

<sup>2</sup> Investments in securities from new issues are permitted only if the terms of issue provide for their admission to a stock exchange or other regulated market open to the public. If one year following purchase they are not yet admitted on the stock exchange or other market open to the public, such securities shall be sold within one month.

**Art. 72** Derivative financial instruments  
(Art. 54 and 56 CISA)

<sup>1</sup> Derivative financial instruments are permitted if:

- a. their underlyings are instruments as defined in Article 70 Paragraph 1 lit. a-d, financial indices, interest rates, exchange rates, loans or currencies;
- b. the underlyings are instruments permitted by the fund regulations; and
- c. they are traded on a stock exchange or other regulated market open to the public.

<sup>2</sup> In the case of transactions involving OTC derivatives, the following conditions shall be complied with in addition:

- a. The counterparty is a regulated financial intermediary specializing in such transactions.
- b. The OTC derivatives are traded daily or may be returned to the issuer at any time. In addition, it shall be possible for them to be valued in a reliable and transparent manner.

<sup>3</sup> A securities fund's overall exposure associated with derivative financial instruments may not exceed 100 percent of the net assets. The overall exposure may not exceed 200 percent of the fund's total net assets. When taking into account the possibility of temporary borrowing amounting to no more than 10 percent of the net assets (Art. 77 Para 2), the overall exposure may not exceed 210 percent of the fund's total net assets.

<sup>4</sup> Warrants shall be treated in the same manner as financial instruments.

**Art. 73** Investments in other collective investment schemes (target funds)  
(Art. 54 and 57 Para. 1 CISA)

<sup>1</sup> The fund management company and the SICAV may only invest in target funds if:

- a. their documents restrict investments in other target funds for their part to a total of 10 percent;
- b. these funds are subject to provisions equivalent to those pertaining to securities funds in respect of the object, organization, investment policy, investor protection, risk

diversification, asset segregation, borrowing, lending, short selling of securities and money market instruments, issue and redemption of units and contents of the semi-annual and annual reports;

- c. the target funds are admitted as collective investment schemes in the country of domicile, where they are subject to investor protection which is equivalent to that in Switzerland, and international legal assistance is ensured.

<sup>2</sup> They may invest a maximum of:

- a. 20 percent of the fund's assets in units of the same target fund; and
- b. 30 percent of the fund's assets in units of target funds which do not meet the relevant directives of the European Union (undertakings for collective investment in transferable securities, UCITS).

<sup>3</sup> In relation to investments in target funds, Articles 78-84 shall not apply.

<sup>4</sup> If, in accordance with the fund regulations, a significant portion of the fund assets may be invested in target funds:

- a. the fund regulations, the prospectus and the simplified prospectus must contain information about the maximum level of management fees that shall be borne by the investing collective investment scheme itself as well as by the target funds;
- b. the annual report specifies the maximum portion of management fees that the investing collective investment scheme shall bear on the one hand and the target funds shall bear on the other.

**Art. 74** Money market instruments  
(Art. 54 Para. 1 CISA)

<sup>1</sup> The fund management company and the SICAV may acquire money market instruments if these are liquid and can be valued and are traded on a stock exchange or other regulated market open to the public.

<sup>2</sup> Money market instruments that are not traded on a stock exchange or other regulated market open to the public may only be acquired if the issue or the issuer is subject to provisions regarding creditor or investor protection and if the money market instruments are issued or guaranteed by:

- a. the Swiss National Bank;
- b. the central bank of a member state of the European Union;
- c. the European Central Bank;
- d. the European Union;
- e. the European Investment Bank;
- f. the Organization for Economic Co-operation and Development (OECD);
- g. another state including its constituent parts;
- h. a public international body of which Switzerland or at least one member state of the European Union is a member;
- i. a public body;
- j. a company whose securities are traded on a stock exchange or other regulated market open to the public;

- k. a bank, securities dealer or other institution that is subject to supervision equivalent to that in Switzerland.

**Art. 75** Liquid assets  
(Art. 54 Para. 2 CISA)

Liquid assets comprise bank credit balances and claims arising from repurchase agreements at sight or on demand with maturities of up to twelve months.

**Art. 76** Securities lending and repurchase agreements (repo, reverse repo)  
(Art. 55 Para. 1 lit. a and b CISA)

<sup>1</sup> Securities lending and repurchase agreements may only be used for the efficient management of the fund's assets. The custodian bank is liable for the proper, efficient settlement of securities lending and repurchase agreements.

<sup>2</sup> Banks, brokers, insurance institutions and securities clearing organizations may be used as borrowers in the context of securities lending provided they specialize in securities lending and furnish collateral which corresponds to the scope and risk of the proposed transactions. Repurchase agreements may be conducted under the same conditions with the institutions mentioned.

<sup>3</sup> Securities lending and repurchase agreements shall be governed by a standardized framework agreement.

**Art. 77** Raising and granting of loans; encumbrance of the fund's assets  
(Art. 55 Para. 1 lit. c and d and Para. 2 CISA)

<sup>1</sup> At the expense of a securities fund:

- a. no loans may be granted, nor may any guarantees be concluded;
- b. no more than 25 percent of the fund's net assets may be pledged or ownership thereof be transferred as collateral.

<sup>2</sup> Securities funds may borrow the equivalent of up to 10 percent of the fund's net assets on a temporary basis.

<sup>3</sup> Securities lending and repurchase agreements in the form of reverse repos are not deemed to be lending pursuant to Paragraph 1 lit. a.

<sup>4</sup> Repurchase agreements in the form of repos pursuant to Paragraph 2 are deemed to be borrowing unless the funds obtained are used as part of an arbitrage transaction for the acquisition of securities of a similar type in connection with a reverse repo.

**Art. 78** Risk diversification in relation to securities and money market instruments  
(Art. 57 CISA)

<sup>1</sup> Including the derivative financial instruments, the fund management company and the SICAV may invest up to 10 percent of the fund's assets in securities or money market instruments of the same issuer.

<sup>2</sup> The total value of the securities and money market instruments of the issuers in which more than 5 percent of the fund's assets are invested may not exceed 40 percent of the fund's assets. This limit shall not apply to sight and time deposits as defined in Article 79 or to transactions in OTC derivatives as defined in Article 80, to which the counterparty is a bank as defined in Article 70 Paragraph 1 lit. e.

**Art. 79** Risk diversification in relation to sight and time deposits  
(Art. 57 CISA)

The fund management company and the SICAV may invest up to 20 percent of the fund's assets in sight and time deposits held with the same bank. Investments in bank deposits (Art. 70 Para. 1 lit. e) in addition to liquid assets (Art. 75) shall both be included in this limit.

**Art. 80** Risk diversification in relation to OTC transactions and derivatives  
(Art. 57 CISA)

<sup>1</sup> The fund management company and the SICAV may invest up to 5 percent of the fund's assets in OTC transactions with the same counterparty.

<sup>2</sup> Where the counterparty is a bank as defined in Article 70 Paragraph 1 lit. e, this limit is raised to 10 percent of the fund's assets.

<sup>3</sup> The derivative financial instruments and claims against counterparties arising from OTC transactions shall be included in the provisions on risk diversification as defined in Articles 73 and 78-84. This shall not apply to derivatives on indices which comply with the conditions defined in Article 82 Paragraph 1 lit. b.

**Art. 81** Overall limits  
(Art. 57 CISA)

<sup>1</sup> Investments, deposits and claims in accordance with Articles 78-80 of the same issuer may not exceed 20 percent of the fund's overall assets.

<sup>2</sup> Investments and money market instruments in accordance with Article 78 of the same group of companies may not exceed 20 percent of the fund's overall assets.

<sup>3</sup> The limits defined in Articles 78-80 and 83 Paragraph 1 may not be accumulated.

<sup>4</sup> In the case of umbrella funds, these restrictions shall apply to each individual subfund.

<sup>5</sup> Companies which form a group in accordance with international accounting standards are deemed to be a single issuer.

**Art. 82** Exceptions for index funds  
(Art. 57 CISA)

<sup>1</sup> The fund management company and the SICAV may invest up to 20 percent of the fund's assets in securities or money market instruments of the same issuer if:

- a. the fund regulations provide for the tracking of an index of equity or debt securities which is recognized by FINMA (index funds); and
- b. the index is sufficiently diversified, representative of the market to which it relates, and is published in an appropriate manner.

<sup>2</sup> The limit shall be increased to 35 percent for any securities or money market instruments

of the same issuer where such instruments strongly dominate regulated markets. This exemption shall only apply in relation to a single issuer.

<sup>3</sup> The investments as defined in this article shall not be considered when observing the limit of 40 percent as defined in Article 78 Paragraph 2.

**Art. 83** Exceptions for publicly guaranteed or issued investments  
(Art. 57 Para. 1 CISA)

<sup>1</sup> The fund management company and the SICAV may invest up to 35 percent of the fund's assets in securities or money market instruments of the same issuer provided such instruments are issued or guaranteed by:

- a. an OECD member country;
- b. a public body from the OECD;
- c. a public international body of which Switzerland or a member state of the European Union is a member.

<sup>2</sup> Subject to the approval of FINMA, they may invest up to 100 percent of the fund's assets in securities or money market instruments of the same issuer. In such event the following rules must be observed:

- a. the investments shall be spread across securities or money market instruments from at least six different issues.
- b. up to 30 percent of the fund's assets shall be invested in securities and money market instruments of the same issue.
- c. reference shall be made in the prospectus and in the advertising material to the specific approval of FINMA; the issuers in which more than 35 percent of the fund's assets are invested shall also be listed therein.
- d. the fund regulations shall include a listing of the issuers in which more than 35 percent of the fund's assets may be invested, together with the corresponding guarantors.

<sup>3</sup> Provided the protection of investors is not endangered, FINMA grants authorization.

<sup>4</sup> The investments as defined in this article shall not be considered when observing the limit of 40 percent as defined in Article 78 Paragraph 2.

**Art. 84** Restriction of the participation in a single issuer  
(Art. 57 Para. 2 CISA)

<sup>1</sup> Neither the fund management company nor the SICAV may acquire equity securities representing more than 10 percent of the overall voting rights in a company or which would enable it to exert a material influence on the executive board of an issuing company.

<sup>2</sup> FINMA may grant an exception provided the fund management company or the SICAV provides evidence that it does not exert a material influence.

<sup>3</sup> The fund management company and the SICAV may acquire the following on behalf of the fund assets:

- a. up to 10 percent of the non-voting equity paper, debt instruments or money market instruments of the same issuer;
- b. up to 25 percent of the units in other collective investment schemes which meet the requirements specified in Article 73.

<sup>4</sup> The limit defined in Paragraph 3 shall not apply if, at the time of acquisition, the gross amount of the debt instruments, the money market instruments or the units in other collective investment schemes cannot be calculated.

<sup>5</sup> The limits defined in Paragraphs 1 and 3 shall not apply to securities and money market instruments which are issued or guaranteed by a country or public body belonging to the OECD or by international public bodies of which Switzerland or a member state of the European Union is a member.

**Art. 85**                      Specific obligation to inform in the prospectus  
(Art. 75 CISA)

<sup>1</sup> The prospectus shall provide information about the categories of investment instruments in which the fund is invested and whether transactions involving derivative financial instruments are conducted. Where transactions involving derivative financial instruments are conducted, an explanation shall be given as to whether such transactions are conducted as part of the investment strategy or for the hedging of investment positions, and how the use of such instruments affects the risk profile of the securities fund.

<sup>2</sup> Where the fund management company or the SICAV are permitted to invest the fund's assets primarily in investments other than those defined in Article 70 Paragraph 1 lit. a and e, or where they constitute an index fund (Art. 82), specific reference shall be made to such fact in the prospectus and in the advertising material.

<sup>3</sup> Where the fund's net assets of a securities fund exhibit high volatility or a high leverage effect owing to the composition of the investments or the investment techniques applied, specific reference shall be made to such fact in the prospectus and in the advertising material.

### **Section 3:    Real estate funds**

**Art. 86**                      Permitted investments  
(Art. 59 Para. 1 and 62 CISA)

<sup>1</sup> The investments of real estate funds shall be specifically named in the fund regulations.

<sup>2</sup> The following are deemed to be real estate pursuant to Article 59 Paragraph 1 lit. a of the Act, which real estate is entered in the Public Land Register, on the basis of the application filed by the fund management company, either under the latter's name with a remark to the effect that the real estate belongs to the real estate fund or in the name of the SICAV:

- a. residential buildings;
- b. properties which are used exclusively or mainly for commercial purposes; mainly shall mean where the income from the commercial element accounts for at least 60 percent of the total income from real estate (commercially used properties);
- c. mixed-use buildings, which are used for residential as well as commercial purposes; mixed shall mean where the income from the commercial element accounts for more than 20 percent but less than 60 percent of the income from real estate;
- d. condominiums;
- e. building land (including properties for demolition) and buildings under construction;
- f. leasehold land.

<sup>3</sup> The following investments are also permitted:

- a. mortgage notes or other contractual rights of lien on real estate;
- b. participations in and claims against real estate companies as defined in Article 59 Paragraph 1 lit. b of the Act;
- c. units in other real estate funds (including real estate investment trusts or REITs) and real estate investment companies and certificates which are traded on a stock exchange or other regulated market open to the public, as defined in Article 59 Paragraph 1 lit. c of the Act;
- d. foreign real estate securities as defined in Article 59 Paragraph 1 lit. d of the Act.

<sup>4</sup> Undeveloped land belonging to a real estate fund shall be connected to the infrastructure network and suitable for immediate development.

**Art. 87** Risk diversification and limits  
(Art. 62 CISA)

<sup>1</sup> Real estate funds shall spread their investments over at least ten properties. Residential estates which have been built using the same principles of construction, in addition to neighboring plots of land, are deemed to be a single property.

<sup>2</sup> The market value of a single property may not exceed 25 percent of the fund's assets.

<sup>3</sup> The following limits expressed as a percentage of the fund's assets shall apply to the investments defined in lit. a–d:

- a. up to 30 percent of the fund's assets may be invested in building land, including properties for demolition, and buildings under construction;
- b. up to 20 percent of the fund's assets may be invested in leasehold land;
- c. up to 10 percent of the fund's assets may be invested in mortgage notes and other rights of lien on real estate;
- d. up to 25 percent of the fund's assets may be invested in other real estate funds and real estate investment companies as defined in Article 86 Paragraph 3 lit. c.

<sup>4</sup> The investments defined in Paragraph 3 lit. a and b may together account for up to 30 percent of the fund's assets.

<sup>5</sup> FINMA may grant exemptions in justified individual instances.

**Art. 88** Dominant influence of the fund management company and the SICAV in the case of ordinary co-ownership  
(Art. 59 Para. 2 CISA)

<sup>1</sup> The fund management company and the SICAV are deemed to exert a dominant influence if they have a majority of the co-ownership shares and votes.

<sup>2</sup> In a set of rules governing use and management as defined in Article 647 Paragraph 1 of the Civil Code (CC) they shall retain all rights, measures and actions provided for in Articles 647a–651 CC.

<sup>3</sup> The right of pre-emption pursuant to Article 682 CC may not be suspended under contract.

<sup>4</sup> Co-ownership of common complexes associated with properties held by the collective

investment scheme which are part of a more extensive development shall not grant a controlling influence. In such cases, the right of pre-emption pursuant to Paragraph 3 may be suspended under contract.

**Art. 89** Liabilities; short-term fixed-interest securities and funds available at short notice

(Art. 60 CISA)

<sup>1</sup> Liabilities are deemed to be borrowings, obligations from business activities, in addition to all claims arising from units on which notice has been given.

<sup>2</sup> Short-term fixed-interest securities are deemed to be debt securities with a term or residual term to maturity of up to twelve months.

<sup>3</sup> Funds available at short notice are deemed to be cash on hand, postal check and bank account deposits at sight and on demand with maturities of up to twelve months, as well as guaranteed credit facilities with a bank for up to 10 percent of the fund's net assets. The credit facilities must be included in the maximum level of pledging permitted pursuant to Article 96 Paragraph 1.

**Art. 90** Collateral for construction projects

(Art. 65 CISA)

Fixed-interest securities with a term or residual term to maturity of up to 24 months may be held as collateral for impending construction projects.

**Art. 91** Derivative financial instruments

(Art. 61 CISA)

Derivative financial instruments are permitted for the hedging of interest rate, currency and market risk. The provisions applicable to securities funds (Art. 72) shall apply accordingly.

**Art. 92** Valuation of real estate upon purchase or sale

(Art. 64 CISA)

<sup>1</sup> Real estate which the fund management company or the SICAV wishes to purchase or sell shall be valued by at least one valuation expert.

<sup>2</sup> The valuation expert shall physically inspect the property when performing such valuation.

<sup>3</sup> Upon the sale of real estate, FINMA may grant an exemption from the duty to obtain a valuation pursuant to Paragraph 1.

<sup>4</sup> The fund management company and the SICAV shall explain to the audit firm the reason for any sale price which is below the estimated valuation or purchase price which is above such valuation.

**Art. 93** Valuation of properties belonging to the collective investment scheme

<sup>1</sup> The market value of the properties belonging to the real estate fund shall be reappraised by the valuation experts at the end of each accounting year.

<sup>2</sup> The properties shall be physically inspected by the valuation experts at least every three years.

<sup>3</sup> The valuation experts shall explain their valuation method to the audit firm.

<sup>4</sup> Where the fund management company and the SICAV do not adopt the revised valuation figure in their accounts, they shall explain such action to the audit firm.

**Art. 94** Assessment and valuation in relation to construction projects

<sup>1</sup> In relation to construction projects, the fund management company and the SICAV shall instruct at least one valuation expert to examine whether or not the probable costs are reasonable and in accordance with the prevailing market situation.

<sup>2</sup> Following the completion of the building, the fund management company and the SICAV shall instruct at least one valuation expert to assess the market value.

**Art. 95** Duty to publish

<sup>1</sup> The fund management company and the SICAV shall publish in the media of publication the market value of the fund's assets and resulting net asset value of the fund units simultaneously with the announcement to the bank or securities dealer entrusted with the regular on- and off-exchange trading of the units of the real estate fund.

<sup>2</sup> In relation to real estate funds which are traded on a stock exchange or other regulated market open to the public, the relevant provisions governing stock trading shall also be observed.

**Art. 96** Special powers  
(Art. 65 CISA)

<sup>1</sup> In relation to pledging land and ceding the rights of lien as collateral pursuant to Article 65 Paragraph 2 of the Act, the encumbrance may not exceed on average half the market value of all real estate assets.

<sup>2</sup> Where the fund management company and the SICAV commission the construction of buildings or carry out the refurbishment of buildings, they may during the period of preparation, construction or refurbishment credit the income statement of the real estate fund for building land and buildings under construction at the prevailing market rate, provided the costs do not exceed the estimated market value as a result.

**Art. 97** Issuing of units in real estate funds  
(Art. 66 CISA)

<sup>1</sup> Units may be issued at any time. This may only be effected in tranches.

<sup>2</sup> The fund management company and SICAV shall specify at least:

- a. the planned number of new units to be issued;
- b. the planned subscription ratio for the existing investors;
- c. the issuing method for the subscription rights.

<sup>3</sup> The valuation experts shall review the market value of each property in order to calculate the net asset value and determine the issue price.

Part 3: Act and Ordinances Title 2: Open-ended collective investment schemes Chapter 3: Types of open-ended collective investment schemes and investment provisions

**Art. 98** Early redemption of units in real estate funds  
(Art. 66 CISA)

Units on which notice has been given in the course of an accounting year may be redeemed early by the fund management company and the SICAV at the close of said accounting year, providing:

- a. the investor has stated this wish in writing at the time of serving notice;
- b. the wishes of all investors who have requested early redemption can be met.

#### **Section 4: Other funds for traditional and alternative investments**

**Art. 99** Permitted investments  
(Art. 69 CISA)

<sup>1</sup> The following investments are specifically admitted for other funds:

- a. securities;
- b. units in collective investment schemes;
- c. money market instruments;
- d. sight and time deposits with a maturity up to twelve months;
- e. precious metals;
- f. derivative financial instruments whose underlyings are securities, collective investment schemes, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, loans, currencies, precious metals, commodities or similar instruments;
- g. structured products relating to securities, collective investment schemes, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, currencies, precious metals, commodities or similar instruments.

<sup>2</sup> In the case of other funds for alternative investments, FINMA may admit other investments such as commodities and commodity certificates.

<sup>3</sup> Investments as defined in Article 69 Paragraph 2 of the Act must be explicitly named in the fund regulations.

<sup>4</sup> In the case of investments in units of collective investment schemes, Article 73 Paragraph 4 shall apply accordingly.

**Art. 100** Investment techniques and restrictions  
(Art. 70 Para. 2 and 71 Para. 2 CISA)

<sup>1</sup> Other funds for traditional investments may:

- a. raise loans for an amount not exceeding 25 percent of the fund's net assets;
- b. pledge or cede as collateral no more than 60 percent of the fund's net assets;
- c. commit to an overall exposure of up to 225 percent of the fund's net assets;
- d. engage in short selling.

<sup>2</sup> Other funds for alternative investments may:

- a. raise loans for an amount not exceeding 50 percent of the fund's net assets;
- b. pledge or cede as collateral no more than 100 percent of the fund's net assets;
- c. commit to an overall exposure of up to 600 percent of the fund's net assets;

d. engage in short selling.

<sup>3</sup> The investment restrictions shall be set out explicitly in the fund regulations. Such regulations shall also govern the nature and scale of short selling permitted.

**Art. 101** Derogations  
(Art. 69–71 CISA)

FINMA may in individual cases grant a derogation from the provisions pertaining to:

- a. the permitted investments;
- b. the investment techniques;
- c. the restrictions;
- d. the risk diversification.

**Art. 102** Risk notice  
(Art. 71 Para. 3 CISA)

<sup>1</sup> The notice regarding special risks (warning clause) requires the approval of FINMA.

<sup>2</sup> The warning clause shall be placed on the first page of the fund regulations and the prospectus, and in all cases in the form in which it was approved by FINMA.

## Chapter 4: General provisions

### Section 1: Custodian bank

**Art. 103** Duty to provide information  
(Art. 72 Para. 2 CISA)

The custodian bank shall notify the audit firm of the executive persons entrusted with the tasks of custodian bank activity.

**Art. 104** Duties  
(Art. 73 CISA)

<sup>1</sup> The custodian bank shall be responsible for account and safekeeping account management on behalf of the collective investment scheme. It shall not have independent access to the assets of the collective investment scheme.

<sup>2</sup> In the case of real estate funds, it shall be responsible for the safekeeping of mortgage notes against which no loans have been raised, in addition to the shares of real estate companies. It may hold accounts with third parties for the purpose of the ongoing management of real estate assets.

<sup>3</sup> In the case of collective investment schemes comprising subfunds, all duties shall be performed by the same custodian bank.

**Art. 105** Change of custodian bank, time limit for lodging objections, entry into force  
and cash repayments  
(Art. 74 CISA)

<sup>1</sup> Article 41 shall apply accordingly for the change in custodian bank of a contractual fund.

<sup>2</sup> The decision to change custodian bank shall be published forthwith in the media of publication of the SICAV.

## **Section 2: Prospectus and simplified prospectus**

**Art. 106** Prospectus  
(Art. 75 and 77 CISA)

<sup>1</sup> The fund management company and the SICAV shall set out in the prospectus (Annex I) all material information required for the evaluation of the collective investment scheme by prospective investors. The prospectus shall in addition contain the fund regulations where interested parties are not notified as to where such regulations may be separately obtained prior to subscription of the units.

<sup>2</sup> The fund management company and the SICAV shall date the prospectus and submit it and any amendment thereto to FINMA at the latest by the time of publication.

<sup>3</sup> They shall amend such prospectus in the event of material changes, but at least once a year.

**Art. 107** Simplified prospectus  
(Art. 76 and 77 CISA)

<sup>1</sup> The simplified prospectus contains the information required pursuant to Annex II of the present Ordinance. FINMA specifically sets out these requirements and in the case of securities funds may amend them to comply with the laws currently in force in the European Communities.

<sup>2</sup> The fund management company and the SICAV shall date the simplified prospectus and submit it and any amendment thereto to FINMA at the latest by the time of publication.

<sup>3</sup> They shall amend the simplified prospectus in the event of material changes, but at least once a year.

## **Section 3: Position of investors**

**Art. 108** Payment; certification of units  
(Art. 78 Para. 1 and 2 CISA)

<sup>1</sup> The paying agent shall be a bank pursuant to the Federal Act on Banks and Savings Institutions or Swiss Post.

<sup>2</sup> Where the fund regulations provide for the delivery of unit certificates, the custodian bank shall, at the investor's request, certify his or her rights in securities (Art. 965 CO) without nominal value. Such securities may be in registered or bearer form. Registered unit certificates shall be structured as order instruments (Art. 967 and Art. 1145 CO).

<sup>3</sup> Unit certificates may only be issued after payment of the issue price.

<sup>4</sup> The issuing of fractions of units shall only be permitted in the case of investment funds.

**Art. 109** Exceptions from the right to redeem at any time  
(Art. 79 CISA)

<sup>1</sup> The fund regulations of a collective investment scheme whose value is difficult to ascertain, or which has limited marketability, may provide for notice to be served only on specific dates, subject to a minimum of four times a year.

<sup>2</sup> FINMA may in the event of a justified request restrict the right to redeem at any time depending on the investments and investment policy. This shall apply specifically in the case of:

- a. investments which are not listed and not traded on another regulated market open to the public;
- b. mortgages;
- c. private equity investments.

<sup>3</sup> Where the right to redeem at any time is restricted, such fact must be stated explicitly in the fund regulations, in the prospectus and in the simplified prospectus.

<sup>4</sup> The right to redeem at any time may be suspended for a maximum period of five years.

**Art. 110** Deferred repayment  
(Art. 81 CISA)

<sup>1</sup> The fund regulations may provide for repayment to be deferred temporarily in the following exceptional cases:

- a. where a market which serves as the basis for the valuation of a significant proportion of the fund's assets is closed, or if trading on such market is restricted or suspended;
- b. in the event of political, economic, military, monetary or other emergencies;
- c. if, owing to exchange controls or restrictions on other asset transfers, the collective investment scheme can no longer transact its business;
- d. in the event of large-scale withdrawals of units which may significantly endanger the interests of the other investors.

<sup>2</sup> The audit firm and FINMA shall be informed forthwith of any decision to defer redemptions. Such decision shall also be communicated to the investors in a suitable manner.

**Art. 111** Compulsory redemption  
(Art. 82 CISA)

<sup>1</sup> Compulsory redemption pursuant to Article 82 of the Act is permitted only in exceptional circumstances.

<sup>2</sup> The reasons for compulsory redemption shall be set out in the fund regulations.

## **Section 4: Open-ended collective investment schemes with subfunds**

### **Art. 112** Subfunds (Art. 92-94 CISA)

<sup>1</sup> The fund management company and the SICAV shall prepare a single set of fund regulations for a collective investment scheme. Such regulations shall include the designation of the scheme and the additional designations of the individual subfunds.

<sup>2</sup> Where the fund management company or the SICAV has the right to create additional subfunds, or dissolve or merge existing subfunds, specific reference shall be made thereto in the fund regulations.

<sup>3</sup> The fund management company and the SICAV shall also set out in the fund regulations that:

- a. fees may be debited only to that subfund for which a specific service is rendered;
- b. costs which cannot be clearly assigned to a particular subfund shall be charged to the individual subfunds in proportion to their assets;
- c. investors shall only be entitled to the assets and income of the particular subfund in which they are invested or whose shares they hold;
- d. only the subfund concerned is liable for the liabilities of that individual subfund.

<sup>4</sup> The fees charged when investors convert from one subfund to another are cited explicitly in the fund regulations.

<sup>5</sup> In relation to the merging of subfunds, Article 115 shall apply accordingly.

### **Art. 113** SICAV with subfunds (Art. 94 CISA)

The risk that a subfund is in certain circumstances liable for another subfund shall be disclosed in the prospectus.

## **Section 5: Restructuring and dissolution**

### **Art. 114** Conditions relating to restructurings (Art. 92 and 95 Para. 1 CISA)

<sup>1</sup> Investment funds or subfunds may be merged by the fund management company if:

- a. provision therefore is made in the relevant fund contracts;
- b. they are managed by the same fund management company;
- c. the relevant fund contracts are basically identical in terms of the provisions pursuant to Article 26 Paragraph 3 lit. b, d, e and i of the Act;
- d. the assets of the funds concerned are valued, the exchange ratio is calculated, and the assets and liabilities are acquired on the same day;
- e. no costs shall arise as a result for either the investment fund or subfunds, or the investors.

<sup>2</sup> In the case of a transfer of assets and liabilities of a SICAV, Paragraph 1 shall apply accordingly.

<sup>3</sup> FINMA may make the merging of investment funds and the transfer of assets and liabilities of a SICAV dependent on additional conditions, especially in the case of real estate funds.

**Art. 115** Procedure for the merging of collective investment schemes  
(Art. 95 Para. 1 lit. a and b CISA)

<sup>1</sup> In the case of the merging of two investment funds, the investors of the fund being transferred shall receive an equivalent number of units in the acquiring fund. The fund being transferred shall be terminated without liquidation.

<sup>2</sup> The fund contract governs the merging procedure. In particular, it contains provisions regarding:

- a. the information to be given to the investors;
- b. the audit firm's duty to inspect the accounts at the time of the merger.

<sup>3</sup> FINMA may grant limited deferment of repayment if the merger is likely to take more than one day.

<sup>4</sup> The fund management company shall notify FINMA that the merger has been completed.

<sup>5</sup> In the case of the transfer of assets and liabilities of a SICAV, Paragraphs 2–4 shall apply accordingly.

**Art. 116** Dissolution of a collective investment scheme  
(Art. 96 and 97 CISA)

<sup>1</sup> The collective investment scheme shall be dissolved and may be liquidated forthwith provided:

- a. the fund management company or the custodian bank has served notice;
- b. the company shareholders of a SICAV have resolved the dissolution.

<sup>2</sup> Where FINMA orders the dissolution of the collective investment scheme, such scheme shall be liquidated forthwith.

<sup>3</sup> Prior to the final payment, the fund management company or the SICAV shall obtain authorization from FINMA.

<sup>4</sup> The trading of units on the stock exchange shall cease at the time of dissolution.

<sup>5</sup> The termination of the custodian bank agreement between the SICAV and the custodian bank shall be notified to FINMA and the audit firm forthwith.

## **Title 3: Closed-ended collective investment schemes**

### **Chapter 1: Limited partnership for collective investment**

**Art. 117** Object  
(Art. 98 Para. 1 CISA)

The limited partnership for collective investment may only manage its own investments. It shall be specifically prohibited from rendering services pursuant to Article 29 of the Act on behalf of third parties.

**Art. 118** General partners  
(Art. 98 Para. 2 CISA)

<sup>1</sup> In relation to the general partners, the conditions of authorization as defined in Article 14 of the Act shall apply accordingly.

<sup>2</sup> Where the company has a general partner, such general partner shall have a minimum paid-up share capital of 100,000 Swiss francs. Where it has several general partners, they shall together have a minimum paid-up share capital of 100,000 Swiss francs.

<sup>3</sup> In relation to the general partners, the authorization and reporting duties as defined in Articles 14 Paragraph 1 and 15 Paragraph 1 shall apply accordingly.

**Art. 119** Company agreement  
(Art. 9 Para. 3 and 102 CISA)

<sup>1</sup> The general partners may delegate investment decisions in addition to other activities, provided this is in the interests of efficient management.

<sup>2</sup> They shall exclusively commission persons who are properly qualified to execute such activities, and shall ensure the instruction, monitoring and control necessary with respect to implementation of the tasks assigned.

<sup>3</sup> The persons holding executive powers with the general partners may participate in the company as limited partners, if:

- a. this is provided for in the company agreement;
- b. the participating interest stems from their private assets; and
- c. the participating interest is subscribed at the time of launch.

<sup>4</sup> The company agreement regulates the details.

**Art. 120** Risk capital  
(Art. 103 Para. 1 CISA)

<sup>1</sup> Risk capital is generally used for the direct or indirect financing of companies and projects in the basic expectation of generating above-average added value, coupled with the above-average probability of making a loss.

<sup>2</sup> Financing may take the following specific forms:  
a. equity capital;

- b. borrowed capital;
- c. mixed forms of equity and borrowed capital such as mezzanine financing.

**Art. 121** Other investments  
(Art. 103 Para. 2 CISA)

<sup>1</sup> The following are specifically permitted:

- a. construction and real estate projects;
- b. alternative investments.

<sup>2</sup> The company agreement regulates the details.

## **Chapter 2: Investment company with fixed capital**

**Art. 122** Object  
(Art. 110 CISA)

<sup>1</sup> The investment company with fixed capital may only manage its own assets. Its primary object is to generate income and/or capital gains, whereby it does not pursue any entrepreneurial activities in the true sense. It shall be specifically prohibited from rendering services pursuant to Article 29 of the Act on behalf of third parties.

<sup>2</sup> It may delegate investment decisions as well as specific tasks, provided this is in the interests of efficient management.

**Art. 123** Permitted investments  
(Art. 110 CISA)

<sup>1</sup> The provisions concerning permitted investments for other funds shall apply accordingly.

<sup>2</sup> FINMA may authorize other investments.

**Art. 124** Media of publication  
(Art. 112 CISA)

Article 39 shall apply accordingly.

**Art. 125** Compulsory redemption  
(Art. 113 Para. 3 CISA)

Article 111 shall apply accordingly.

**Art. 126** Amendments to the articles of association and investment regulations  
(Art. 115 Para. 3 CISA)

In the media of publication, the SICAF publishes the significant amendments to the articles of association and the investment regulations resolved by the general meeting and approved by FINMA, indicating the locations where the full wording of the amendments may be obtained free of charge.

## **Title 4: Foreign collective investment schemes**

### **Chapter 1: Approval**

**Art. 127** Designation of the foreign collective investment scheme  
(Art. 120 Para. 2 lit. c and 122 CISA)

If the designation of a foreign collective investment scheme provides grounds or might provide grounds for confusion or deception, FINMA may require a supplementary explanation.

**Art. 128** Written representative and paying agent agreement  
(Art. 120 Para. 2 lit. d CISA)

<sup>1</sup> The foreign fund management company shall provide evidence that a written representative agreement has been concluded between itself and the representative.

<sup>2</sup> The foreign fund management company and the custodian bank shall provide evidence that a written paying agency agreement has been concluded between themselves and the paying agent.

**Art. 129** Simplified, fast-track approval procedure  
(Art. 120 Para. 3 CISA)

FINMA may in individual cases specify a simplified, fast-track approval procedure for foreign collective investment schemes provided such investments have already been approved by a foreign supervisory authority, such arrangement being reciprocal.

**Art. 130** Lapse of approval  
(Art. 15 and 120 CISA)

The approval for foreign collective investment schemes pursuant to Articles 15 and 120 of the Act shall lapse if FINMA in the country of origin of the collective investment scheme withdraws its approval.

### **Chapter 2: Representatives of foreign collective investment schemes**

**Art. 131** Minimum capital and furnishing of collateral  
(Art. 14 Para. 1 lit. d CISA)

<sup>1</sup> The representative of foreign collective investment schemes shall have a minimum capital of 100,000 Swiss francs. This shall be paid up in cash.

<sup>2</sup> In all other respects, Articles 19 and 20 shall apply accordingly.

**Art. 132** Professional indemnity insurance  
(Art. 14 Para. 1 lit. d CISA)

The representative shall conclude professional indemnity insurance appropriate to its business activities of at least one million Swiss francs, less the minimum capital or effective collateral furnished in accordance with Article 131.

**Art. 133** Publication and reporting regulations  
(Art. 75–77, 83 Para. 4, 124 Para. 2 and 156 Para. 1 CISA)

<sup>1</sup> The representative of a foreign collective investment scheme shall publish the relevant documents, such as the prospectus and simplified prospectus, articles of association or fund contract, together with the annual and semi-annual report, in an official language. FINMA may authorize publication in another language, provided such publication is directed only towards a specific investor eligibility.

<sup>2</sup> The following shall be indicated in the publications and advertising material:

- a. the country of origin of the collective investment scheme;
- b. the representative;
- c. the paying agent;
- d. the location where the relevant documents such as the prospectus and simplified prospectus, articles of association or fund contract, together with the annual and semi-annual report, may be obtained.

<sup>3</sup> The representative shall submit the annual and semi-annual reports to FINMA without delay, notify it of amendments to the relevant documents forthwith and publishes such amendments in the media of publication. Articles 39 Paragraph 1 and 41 Paragraph 1, second sentence, shall apply accordingly.

<sup>4</sup> It shall publish the net asset values of units at regular intervals.

## **Title 5: Audit and supervision**

... *repealed*

**Art. 134-139** *repealed*

... *repealed*

**Art. 140** *repealed*

**Art. 141** Continuation of the collective investment scheme  
(Art. 96 CISA)

<sup>1</sup> Where the continuation of the investment fund is in the interests of the investors and a suitable new fund management company or custodian bank can be found, FINMA may order the transfer of the fund contract thereto including rights and obligations.

<sup>2</sup> Where the new fund management company enters into the fund contract, the liabilities and ownership of the assets and rights belonging to the investment fund are required by law to be passed to the new fund management company.

<sup>3</sup> Where the continuation of the SICAV is in the interests of the investors and a suitable new SICAV can be found, FINMA may order the transfer of the assets thereto.

**Art. 142** Form of documents to be submitted  
(Art. 1 and 144 CISA)

<sup>1</sup> FINMA may determine the form for submission, specifically:

- a. of the prospectuses and simplified prospectuses;
- b. of the documents specified in Article 15 Paragraph 1 lit. a-e of the Act;
- c. of the annual and semi-annual reports.

<sup>2</sup> It may designate a third party as the recipient of the submission.

## **Title 6: Final and transitional provisions**

**Art. 143** Repeal and amendment of previous legislation

The repeal and amendment of the previous legislation are governed in Annex III.

**Art. 144** Transitional provisions

<sup>1</sup> With the exception of the following provisions, this Ordinance shall apply to the following as of entry into force:

- a. new collective investment schemes and existing investment funds;
- b. all persons subject to the duty to obtain authorization in accordance with Article 13 of the Act;
- c. audit firm pursuant to Article 126 et seq. of the Act.

<sup>2</sup> Within one year following the entry into force of this Ordinance, investment clubs shall comply with the provisions set out in Article 1.

<sup>3</sup> Within six months following the entry into force of this Ordinance, regulated financial intermediaries as defined in Article 5 Paragraph 1 lit. a of the Act must issue simplified prospectuses which satisfy the requirements of Article 4 Paragraph 3.

<sup>4</sup> Within one year following the entry into force of this Ordinance, existing investment funds and subfunds of an umbrella fund shall comply with the provision concerning minimum assets (Art. 35 Para. 2).

<sup>5</sup> After the expiration of one year following the entry into force of this Ordinance, joint and several guarantees in accordance Article 15 Paragraph 1 lit. e of the Investment Fund Ordinance of October 19, 1994 shall no longer be recognized as qualifying capital.

<sup>6</sup> Within one year following the entry into force of this Ordinance, existing representatives of foreign collective investment schemes shall comply with the provisions concerning minimum capital (Art. 131) and professional indemnity insurance (Art. 132).

<sup>7</sup> Exceptions which FINMA has granted on a case-by-case basis to fund management companies of investment funds for institutional investors with professional treasury operations in accordance with Article 2 Paragraph 2 of the Investment Fund Ordinance (Art. 10 Para. 5 CISA) shall continue to apply.

<sup>8</sup> Within one year following the entry into force of this Ordinance, the audit firm of asset managers and of representatives of foreign collective investment schemes shall at least comply with the recognition requirements specified in Article 136.

<sup>9</sup> In special cases, FINMA may extend the time limits cited in this Article.

**Art. 145**          Entry into force

This Ordinance enters into force on 1 January 2007.

## Annex I CISO

(Art. 106)

Minimum contents of the prospectus

In addition to the contents prescribed in the Act and in the Ordinance, the prospectus shall contain the following:

### **1 Information concerning the collective investment scheme**

- 1.1 Date of formation and indication of the country in which the collective investment scheme was established;
- 1.2 The duration in the case of collective investment schemes with a fixed term (Art. 26 Para. 3 lit. i and 43 CISA);
- 1.3 Information concerning the relevant tax provisions (including deductions of withholding tax) for the collective investment scheme;
- 1.4 Key date for the annual financial statements and frequency of the distributions;
- 1.5 Name of the audit firm;
- 1.6 Information concerning the units (e.g. nature of the rights represented by the unit and description of the voting rights of the investors where applicable; available documents or certificates; qualification and denomination of any securities; conditions and effects of the dissolution of the collective investment scheme);
- 1.7 Where applicable, information about stock exchanges and markets on which the units are listed or traded;
- 1.8 Procedural details and conditions for the issuing and/or sale, redemption and/or repayment of units (e.g. method, frequency of price calculation and publication; in the latter case together with the location; information about the costs associated with the sale, issuing, redemption or repayment of units) and conditions under which such actions may be suspended;
- 1.9 Information concerning the calculation and appropriation of the net income;
- 1.10 Description of the investment objectives, investment policy and its restrictions, the permitted investment techniques and instruments, together with their scope;
- 1.11 Information concerning the valuation of the assets;
- 1.12 Information concerning the amount and calculation of the fees payable at the expense of the collective investment scheme to the fund management company, SICAV and custodian bank as well as third parties; furthermore, information about the intended appropriation of the management fee, any performance fee, the coefficient of the total expense ratio (TER) and portfolio turnover rate (PTR); finally, information about commissions and other financial benefits where applicable;
- 1.13 Information concerning the location where the fund regulations, if not attached, and periodic reports are available;
- 1.14 Information concerning the legal status (contractual fund or SICAV) and nature of the collective investment scheme (securities fund, real estate fund, other fund for traditional or alternative investments);
- 1.15 Information concerning the specific risks and high volatility where applicable;

- 1.16 In the case of funds for alternative investments a glossary explaining the most important terminology.

## **2 Information concerning the licensee (fund management company, SICAV)**

- 2.1 Date of formation, legal status, registered office and main administrative office;
- 2.2 Information concerning other collective investment schemes managed by the fund management company and, where applicable, about its rendering of other services;
- 2.3 Names and functions of members of the governing and executive bodies in addition to any relevant activities not performed on behalf of the licensee (fund management company, SICAV);
- 2.4 Amount of subscribed and paid-up capital;
- 2.5 Persons to whom investment decisions and other specific tasks have been delegated;
- 2.6 Information concerning the exercising of membership and creditors' rights.

## **3 Information concerning the custodian bank**

- 3.1 Legal status, registered office and main administrative office;
- 3.2 Primary activity.

## **4 Information concerning third parties whose fees are charged to the collective investment scheme**

- 4.1 Name/company;
- 4.2 Elements of the contract between the licensee (fund management company, SICAV) and third parties which are significant for the investors, except for fee arrangements;
- 4.3 Other significant activities of the third parties;
- 4.4 Specialist knowledge of third parties entrusted with management and decision-making powers.

## **5 Further information**

Information concerning payments to the investors, the redemption of units and information and notices published about the collective investment scheme both in relation to the country of domicile and any third countries in which the units are distributed.

- 6 Further investment information
- 6.1 Where applicable, the historical results of the collective investment scheme; such information may be contained either in the prospectus or attached thereto;
- 6.2 Profile of the typical investor for whom the collective investment scheme has been conceived.

## **7 Financial information**

Any costs or charges, with the exception of the costs cited in point 1.8, by way of a breakdown showing those charged to the investor and those deducted from the assets of the collective investment scheme.

## Annex II CISO

(Art. 107)

Contents of the simplified prospectus

The simplified prospectus shall contain the following information:

### **1 Brief profile of the collective investment scheme**

- 1.1 Date of formation and indication of the country in which the collective investment scheme was established;
- 1.2 Information concerning different subfunds where applicable;
- 1.3 Name of fund management company where applicable;
- 1.4 The duration in the case of collective investment schemes with a fixed term;
- 1.5 Name of the custodian bank;
- 1.6 Name of the audit firm;
- 1.7 Names of the persons to whom investment decisions and other specific tasks are delegated;
- 1.8 Name of the financial group offering the collective investment scheme (e.g. a bank).

### **2 Investment information**

- 2.1 Brief definition of the investment objective;
- 2.2 Investment strategy and brief assessment of the risk profile of the collective investment scheme (including the information required pursuant to Art. 53 et seq., Art. 58 et seq. and Art. 68 et seq. CISA where applicable);
- 2.3 The past performance of the collective investment scheme where applicable, and a warning notice that past performance provides no indication as to future performance;
- 2.4 Profile of the typical investor for whom the collective investment scheme has been conceived.

### **3 Financial information**

- 3.1 Information concerning the relevant tax provisions (including deductions of withholding tax) for the collective investment scheme;
- 3.2 Information concerning the fees charged in relation to the issue and redemption of units;
- 3.3 Information concerning the fees and costs charged to the investors and to the fund's assets; furthermore, information about the intended appropriation of the management fee, any performance fee, the coefficient of the total expense ratio (TER) and portfolio turnover rate (PTR).

### **4 Information concerning trading**

- 4.1 The manner in which units may be purchased;
- 4.2 The manner in which units may be sold;
- 4.3 Where applicable in the case of collective investment schemes with different

subfunds, information concerning the manner in which investors may convert from one subfund to another and information concerning the attendant costs;

- 4.4 The date and manner in which income is distributed where applicable;
- 4.5 Frequency and location/manner of publication or disclosure of the net asset values.

**5 Further information**

- 5.1 Information concerning the location where the prospectus and the annual and semi-annual reports may be obtained free of charge upon request;
- 5.2 The relevant supervisory authority;
- 5.3 Information concerning a contact point where further information may be obtained where applicable;
- 5.4 Date of publication of the simplified prospectus.

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