Portfolio Managers – Impact of the New Financial Market Regulation

21.12.2018

- **FinIA expected to enter into force on 1 January 2020**
- **Independent/external asset managers (newly designated as portfolio managers) and trustees to become subject to licensing and supervision**
- **Rules of conduct**

1. Current Regulatory Regime

Independent and external asset managers can currently operate without a license and are not subject to the prudential supervision of the Swiss Financial Market Supervisory Authority (FINMA). From a regulatory perspective, they must, however, abide by the anti-money laundering regulations and asset management regulations of self-regulatory organisations (SROs) of which they are a member.

Currently, asset managers of collective investment schemes require a license and are supervised by FINMA unless the collective investment schemes are only distributed to qualified investors and the assets under management are below a certain de minimis threshold. They must also observe anti-money laundering regulations and a number of other regulations, including the rules of conduct under the Collective Investment Scheme Act (CISA) and the regulations of the Swiss Funds and Asset Management Association (SFAMA) (which is a self-regulatory organisation) as well as the Collective Investment Schemes Ordinance (CISO) and the Collective Investment Schemes Ordinance of FINMA (FINMA-CISO).

2. Overview of the New Financial Market Regulation

The Financial Institutions Act (FinIA) introduces a prudential licensing duty and supervision for all portfolio managers.

Pestalozzi Rechtsanwälte AG
Feldeggstrasse 4
CH-8008 Zürich
T +41 44 217 91 11
zrh@pestalozzilaw.com

Pestalozzi Avocats SA
Cours de Rive 13
CH-1204 Genève
T +41 22 999 96 00
gva@pestalozzilaw.com

pestalozzilaw.com

Under the new regime, portfolio managers are regulated and require a FINMA license in order to perform asset management activities in Switzerland. This is a novelty under Swiss law. Portfolio managers have to observe capital and liquidity requirements: they must possess a required minimum capital of CHF 100'000 which must be fully paid up. Additionally, they need to provide appropriate guarantees and take on a professional liability insurance. Portfolio managers will be supervised by one or more supervisory organisations domiciled in Switzerland, which, in turn, are supervised by FINMA.

Asset managers of collective investment schemes continue to be FINMA regulated comparable to the existing regulations. Together with managers for occupational pension schemes, they are reclassified as managers of collective assets.

The following portfolio managers are exempt from applying for a license:

- persons that exclusively manage assets of persons with whom they have business or family ties (single family office exemption); or
- persons who exclusively manage assets in the framework of employee participation plans.

In the course of the parliamentary discussions, "grandfathering" provisions were rejected (i.e. the possibility of making an exception from the authorisation requirements for well-established portfolio managers).

All portfolio managers must abide by the rules of conduct as well as the organisational rules under the Financial Services Act (FinSA).

3. Selected Key Points for Portfolio Managers

FinIA expands the licensing duty and supervision to portfolio managers, i.e., to all persons or institutions that manage client assets in a professional capacity and to trustees. As of 1 January 2020, all portfolio managers - including independent/external asset managers that operate without a license under the current regulatory regime - must apply for a FINMA authorisation, which will likely require organisational adjustments.

Already licensed financial institutions do not need to apply for a new license from FINMA but must comply with the relevant new FinIA requirements within the applicable transition periods.

The rules of conduct include vast information and documentation obligations and the performance of a suitability test under FinSA. They apply to all portfolio managers.

Oliver Widmer

Partner
Attorney at law
Head Financial Services

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 92 42
oliver.widmer@pestalozzilaw.com



Robert Furter

Senior Counsel
Attorney at law

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 91 55
robert.furter@pestalozzilaw.com

