

Column MLL Distribution of collective investment schemes

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Column

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Distribution of collective investment schemes: What changes will be ushered in by the Financial Services Act and the Financial Institutions Act?

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Up until now, the concept of distribution, the obligation to obtain a licence as a distributor, and the obligation to obtain approval for the relevant documents of collective investment schemes have been regulated in Switzerland through the Collective Investment Schemes Act (**CISA**). Although the concept of distribution was comprehensively redefined as recently as March 2013, the next legislative project has already been unleashed: The Swiss parliament is now tackling the drafts of the Financial Services Act (**FinSA**) and the Financial Institutions Act (**FinIA**).

Both these pieces of legislation involve **cross-sectoral regulation of distribution**, comprising rules for the provision of financial services on the one hand and for the



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offering of financial products on the other. The new guidelines are designed to enhance customer protection in the Swiss financial market while at the same time strengthening the competitiveness of the Swiss financial centre. In particular, comparable requirements are to be laid down for all market participants. As part of this initiative, the Collective Investment Schemes Act will be streamlined and limited to product-specific issues.

From now on, units of collective investment schemes will count as **financial instruments**. The purchase, sale and transfer of such units, the acceptance of orders for such units, the issuing of personal recommendations in respect of such units (investment advice), and the management of such units (asset management) will qualify as a **financial service**.

Under the FinIA, the current **obligation for distributors of collective investment schemes to obtain a license will be abolished**, which will put these instruments on a par with other financial instruments such as equities. This obligation will be replaced by a **registration obligation and an initial and ongoing training obligation for client advisers**, i.e. for all natural persons who provide financial services either on behalf of a financial service provider or as a financial service provider in their own right. In addition, client advisers will have to adhere to an entire list of **regulatory conduct obligations** in the future. However, these will for the most part be based on existing obligations under mandate law, e.g. the requirements that apply for dealing with conflicts of interests or retrocessions, as well as record-keeping, information, accountability, and disclosure obligations. As the FinSA will also cover the cross-border business, both Swiss and foreign client advisers will be equally affected.

The **new term “offering”** in the FinSA will replace the existing term “distribution” from the Collective Investment Schemes Act, whereby any invitation to acquire a financial instrument that contains sufficient information on the offer conditions and the financial instrument will count as an offering. As no extension of the obligation to obtain approval to **foreign collective investment schemes** is being sought, the existing “no distribution” situations will be reclassified as “offers to qualified investors”. As part of this development, the obligation introduced in March 2013 to appoint a representative and a paying agent in the event of distribution of a foreign collective investment scheme to certain categories of qualified investors will be reversed.

Although the FinSA does regulate the **prospectus obligation** comprehensively for all types of financial instruments, the provisions that apply to units in collective investment schemes have been largely taken over from the Collective Investment Schemes Act without any change in content. The Key Investor Information Document (**KIID**) is now replaced by the Basic Information Sheet (**BIB**), which must in principle be drawn up for all financial instruments being offered to private investors – with the exception of equities and certain categories of securities deemed to be on a par with equities.

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In summary, it may be said that while the concept of distribution has been replaced by the concept of the offering, little will ultimately change when it comes to the offering of units in collective investment schemes. Positive aspects of the new regime include the abolition of the obligation for distributors to obtain a licence and the abolition of the need to appoint a representative and paying agent in the distribution of foreign collective investment schemes to specific categories of qualified investors. On the other hand, the registration obligation, the initial and ongoing training obligation, and the conduct obligations for client advisers will inevitably give rise to a certain workload and the corresponding costs.

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