

Frequently asked questions (FAQs)

Asset management

(last amended on 1 October 2009)

1. What is meant by "asset management"?

In asset management a client signs an agreement with an asset manager to invest, on a discretionary basis, the client's assets to meet specified investment goals for the benefit of the client. Following from the asset management agreement a power of attorney is issued to the asset manager enabling it to select, purchase and sell securities and other instruments in the client's name and for the client's account. The client is not directly involved in the actual investment decisions or their execution. Prior to the asset management agreement being finalised stock is taken of the client's situation and needs. The client's assets are then invested in accordance with the investment goals developed on the basis of this analysis. For a comprehensive overview of the asset management industry, please refer to the report¹ issued by the Swiss Federal Banking Commission covering incentive systems and conflicts of interest in the sale and distribution of financial products dated August 2008. The report also mentions relevant questions with regard to asset managers (and investment advisors; cf. text box no. 4).

2. Is asset management subject to licensing?

Asset management as such – i.e. acting in the name and for the account of a client based on a power of attorney issued by the client – is not subject to licensing in Switzerland. However, "independent" asset managers are subject to licensing under the Anti-Money Laundering Act² (AMLA; SR 955.0) or must become a member of a recognised anti-money laundering self-regulation organisation.

The situation is different with regard to account management and custodial services, i.e. acceptance of funds, safekeeping of securities, etc., since only licensed banks and securities dealers under FINMA supervision may engage in these operations. The same applies to the asset managers of Swiss collective investment schemes charged by a fund management company with the management of a collective investment scheme, for example. If, on the other hand, only foreign collective investment schemes are being managed, subjecting one's self to regulatory supervision is voluntary.

3. What rules and regulations apply to asset managers?

Banks, securities dealers and asset managers of collective investment schemes supervised by FINMA must comply with statutory licensing requirements at all times and, depending on the sector, are also

¹ www.finma.ch/archiv/ebk/d/regulier/konsultationen/bericht-vertriebsverguetungen-20080904-d.pdf

² www.admin.ch/ch/e/rs/c955_0.html

subject to specific rules of conduct. Rules of this type are specified in particular in art. 11 of the Stock Exchange and Securities Trading Act³ (SESTA), art. 20 et seq. of the Collective Investment Schemes Act⁴ (CISA) and art. 31 et. seq. of the Collective Investment Schemes Ordinance⁵ (CISO). The rules and regulations of self-regulation organisations recognised by FINMA as minimum standards⁶ are also binding, whose compliance is verified by recognised audit firms. These self-regulation rules and regulations include the following in particular: Guidelines concerning Asset Management Mandates issued by the Swiss Bankers' Association and its Code of Conduct for Securities Dealers as well as the Code of Conduct issued by the Swiss Funds Association and its Code of Conduct for Asset Managers of Collective Investment Schemes.

"Independent" asset managers – a non-protected occupational title – are not subject to any supervisory rules of conduct. As a rule, the provisions of the Civil Code apply to them. However, following from art. 6 sect. 2 CISO, FINMA has recognised the rules of conduct of various professional organisations, i.e.

- "Code de déontologie relatif à l'exercice de la profession de gérant de fortune indépendant" issued by the Association Romande des Intermédiaires Financiers (ARIF);
- "Code suisse de conduite relatif à l'exercice de la profession de gérant de fortune indépendant" / "Codice deontologico svizzero per l'esercizio della gestione indipendente di patrimoni" / "Schweizerische Standesregeln für die Ausübung der unabhängigen Vermögensverwaltung" issued by the Swiss Association of Asset Managers (SAAM);
- "Norme di comportamento nell'ambito della gestione patrimoniale (NCGP)" issued by the Organismo di Autodisciplina dei Fiduciari del Cantone Ticino (OAD FCT);
- "Règlement relatif aux règles-cadres pour la gestion de fortune" issued by the OAR-G Organisme d'autorégulation fondé par le GSCGI et GPCGFG;
- "Règles d'Ethique Professionnelle" issued by the Swiss Association of Independent Financial Advisors (SAIFA);
- "Standesregeln" issued by the PolyReg Allg. Selbstregulierungs-Verein;
- "Verhaltensregeln in Sachen Ausübung der Vermögensverwaltung" issued by the VQF Verein zur Qualitätssicherung von Finanzdienstleistungen.

Establishing to whom these rules and regulations apply and their enforcement and monitoring is the task of the respective professional organisation. Most "independent" asset managers had to declare by FINMA by 30 September 2009 their compliance with one of the minimum standards recognised so as to satisfy the requirements of collective investment scheme laws.

³ www.admin.ch/ch/d/sr/9/954.1.de.pdf

⁴ www.admin.ch/ch/d/sr/9/951.31.de.pdf

⁵ www.admin.ch/ch/d/sr/9/951.311.de.pdf

⁶ www.finma.ch/e/regulierung/Documents/finma-rs-2008-10-e.pdf

4. Where can I find more information?

FINMA maintains a list of supervised institutions.⁷

The professional organisations mentioned above can provide information on which “independent” asset managers are affiliated with them, which of the professional organisation’s rules and regulations they must satisfy and if they comply.

5. Who can I contact if I have further questions?

questions@finma.ch or tel. +41 31 327 91 00

⁷ www.finma.ch/e/beaufsichtigte/Pages/bewilligungstraeger.aspx