

Circular 2009/1

Guidelines on asset management

Guidelines for the recognition of self-regulation in asset management as minimum standard

Reference: FINMA Circ. 09/1 "Guidelines on asset management"
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 Last amendment: 18 December 2008
 Legal framework: FINMASA art. 7 sect. 1 lett. b
 SESTA art. 1, 11
 CISA art. 1, 2, 3, 10, 14, 20, 24, 31
 CISO art. 3, 6, 27, 30, 31

Addressees																					
BA			ISA			SESTA		CISA						AMLA			Other				
Banks	Financial groups and -congl.	Other intermediaries	Insurers	Insurance groups and -congl.	Insurance intermediaries	Stock exch. and participants	Securities dealers	Fund management companies	SICAVs	Limited partnerships for CISs	SICAFs	Custodian banks	Asset managers CISs	Distributors	Representatives of foreign CISs	Other intermediaries	SROs	DSFIs	SRO-supervised institutions	Audit firms	Rating agencies
X						X		X	X	X	X	X	X	X	X						

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I. Purpose and framework

This Circular sets out the guidelines applied by the Swiss Financial Market Supervisory Authority FINMA as a yardstick when an asset management organisation seeks to have its code of conduct recognised as a minimum standard. 1

There are many professional organisations who represent the interests of firms operating in the asset management sector (sole proprietorships, partnerships or corporations). FINMA does not wish to grant an exclusive right to any one of them by virtue of only recognising its code of conduct as a minimum standard for the industry. On the contrary, it is open to recognising various regulations as a minimum standard. However, in order to guarantee a minimum equivalence of these regulations, FINMA establishes in this Circular the guidelines that the respective code of conduct must embody at minimum. As such, these guidelines constitute a type of "minimum standard for minimum standards". 2

Licence holders pursuant to the Collective Investment Schemes Act (CISA; SR 951.31) and their mandataries must comply with rules of conduct. In the collective investment schemes sector, FINMA may establish the rules of conduct of a professional organisation as a minimum standard (art. 20 sect. 2 CISA). It can make the issuing of a licence dependent on adherence to rules of conduct of a professional organisation (art. 14 sect. 2 CISA; art. 27 of the Collective Investment Schemes Ordinance [CISO; SR 951.311]). In addition, investors are deemed to be "qualified" in terms of the CISA if they have concluded a written contract with an independent asset manager that is subject to the provisions of the Anti-Money Laundering Act (AMLA; SR 955.0) and also to rules of conduct that are recognised by FINMA as a minimum standard (art. 10 sect. 4 CISA; art. 6 sect. 2 CISO). These qualified investors may also be offered non-approved foreign financial products without this being deemed to constitute public advertising as defined by the CISA (cf. art. 3 and art. 10 sect. 3 and 4 CISA; art. 3 CISO). 3

Pursuant to the Banking Act (BA; SR 952.0) or Stock Exchange and Securities Trading Act (SESTA; SR 954.1), licence holders must also comply with rules of conduct. Several self-regulatory measures on this are currently recognised by FINMA as a minimum standard (cf. FINMA Circ. 08/10 "Self-regulation as a minimum standard"). 4

II. Scope of application

FINMA views these guidelines as a yardstick for all self-regulatory measures submitted to it by professional organisations of the asset management sector (including banks and securities dealers) for the purpose of recognition as a minimum standard. To the extent that the SESTA and CISA and the associated implementing regulations specify any further-reaching duties incumbent upon supervised securities dealers and licence holders, they shall take precedence. FINMA reserves the right not to recognise rules of conduct when the proper implementation by the respective professional organisation appears questionable. 5

Monitoring the compliance of asset managers with regard to their obligations in terms of combating money laundering takes place in the context of oversight by the regulatory authorities or self-regulatory organisations designated for asset managers as provided for by the AMLA. This Circular does not deal with self-regulatory measures pursuant to the AMLA. 6

III. Recognition of rules of conduct

In order to gain recognition, the rules of conduct of professional organisations whose members operate in the asset management sector must cover the following items and take account of the following principles: 7

A. Asset management contract

a) Form of contract

An asset management contract must be concluded in writing. 8

b) Content of contract

An asset management contract or its annexes must contain in particular details on the following: 9

- a) Scope of an asset manager's powers;
- b) Investment goals and restrictions;
- c) Reference currency;
- d) Method and frequency of reporting to the client;
- e) Remuneration of an asset manager;
- f) Possibility of delegating tasks to third parties.

B. Obligations of asset managers

Asset managers must guarantee proper business conduct. 10

a) Duty of loyalty

Asset managers must safeguard the interests of their clients. 11

Asset managers must take appropriate organisational measures in order to prevent conflicts of interest and preclude any disadvantage for their clients by virtue of such conflicts of interest. In the event that disadvantages cannot be precluded despite these measures being taken, asset managers must inform their clients accordingly. 12

The remuneration terms of individuals charged with asset management must avoid inducements that might lead to conflicts with their duty of loyalty. 13

All investments and transactions must be in the client's interest. In particular, asset managers must not engage in the following: 14

- a) Reshuffling of portfolios without the clients' economic interest in mind (generation of fees and commissions; portfolio churning);

- b) Taking advantage of the knowledge of client orders for the purpose of engaging in transactions of one's own prior to, in parallel to or directly subsequent to the client's transaction (self-dealing; front / parallel / after running).

b) Exercise of due diligence

Asset managers must adapt their organisation in keeping with the number of their clients, the volume of assets under management by them, the investment strategies applied and products selected. 15

Asset managers must ensure that investments are always in line with the designated investment objectives and restrictions. 16

Asset managers must review the investment strategies employed on a periodical basis. 17

Asset managers must ensure adequate risk diversification, the investment strategies permitting. 18

If not licenced by FINMA as a bank or securities dealer, asset managers may not accept any assets of clients or maintain any settlement accounts. The assets entrusted to them must be deposited with a bank or securities dealer and administered on the basis of a written power of attorney whose scope is defined in clear-cut terms. 19

Asset managers may delegate asset management tasks to mandataries provided that this is in the interest of their clients. Asset managers must carefully select, instruct and monitor mandataries. Delegated tasks must be defined in writing in a clear-cut manner. Mandataries must possess the requisite professional qualifications so as to ensure the proper execution of the tasks entrusted to them. They must comply with rules of conduct that are comparable to the ones applicable to the asset manager. Fund management companies authorised by FINMA must comply with FINMA Circ. 08/37 "Delegation by fund management companies / SICAVs". 20

Asset managers must take the requisite measures for the event that they are not available or meet their demise. 21

c) Disclosure obligations

Asset managers must advise their clients of the rules of conduct of the professional organisation of which they are a member. 22

Asset managers must inform their clients, in an appropriate manner commensurate with the clients' level of knowledge, of the risks associated with the investment objectives and restrictions agreed with them. This information may be provided in a standardised form. 23

If not already public knowledge, asset managers must inform clients of any key changes in staff, their organisation or ownership structure insofar as clients are directly affected. 24

Asset managers must report to clients on their conduct of business as mandataries, this to be done on a regular basis and if specifically requested. 25

In complying with their reporting obligation, asset managers must adhere to the standards customary in the industry, i.e. with regard to the calculation method applied, the period selected and, as applicable, any benchmark indexes applied. 26

C. Remuneration of asset managers

Asset managers must establish in written contracts with their clients (or annexes) the type, terms and elements of their remuneration. 27

Asset management contracts or their annexes must govern who is entitled to any inducements received by asset managers from third parties in the internal context of the asset management mandate issued to them or at the opportunity of executing the mandate. 28

Asset managers must advise their customers of any conflicts of interest that might arise as the result of accepting third-party inducements. 29

Asset managers must inform their clients of the calculation parameters or spread of inducements they receive or might receive from third parties. In so doing, they must differentiate various product classes, insofar as this is possible. 30

At the request of clients, asset managers must also disclose the amount of any third-party inducements already received by them provided that they can be individually allocated to a specific client relationship with a reasonable degree of effort (e.g. finder's fees und "retrocessions" of brokerage fees or custody fees). 31

D. Monitoring and sanctions

The professional organisations provide for monitoring of compliance with rules of conduct for members not subject to FINMA supervision and for disciplining them in the event of violations. 32

IV. Final provisions

The Swiss Bankers Association will adapt its self-regulatory measures on asset management in accordance with margin nos. 27–31 within eighteen months of the entry into force of this Circular. 33