

CH-3003 Bern

To all banks, securities dealers
and insurance companies

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Contact: Nicolas Ramelet
Phone: +41 (0)31 327 94 58
E-mail: nicolas.ramelet@finma.ch
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FINMA Newsletter 18 (2010)

Handling of Life Insurances with separately managed accounts/portfolios

Dear Sir/Madam,

In its Newsletter 9 (2010) of 27 April 2010, FINMA communicated the obligations of financial intermediaries under the Anti Money Laundering Act when dealing with life insurance policies with separately managed accounts/portfolios (so-called insurance wrappers), which resulted in a number of questions being raised. Subsequently, the current newsletter 18 (2010) aims at addressing these questions following discussions led by FINMA between representatives of the banking and insurance sectors.

1 Definition

In the case of life insurance policies with separately managed accounts/portfolios (insurance wrappers), an insurance company keeps an investment portfolio/investment account or sub-portfolio/sub-account at a bank or securities dealer, which is used to hold the investments of an individual client of the insurance company and manage them under the terms of a life insurance policy. Ownership of the assets is assigned to the insurance company.

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2 Obligations of banks and securities dealers

Banks and securities dealers (hereinafter “the financial intermediary”) *are free to* ask the insurance company to systematically provide details of the policy holder’s last name, first name, address, date of birth and nationality and, if it is a different person, of the person actually paying the premiums, and record these details appropriately or dispense with them if margin number 34 CDB 08 is applicable.

In the following four cases, *when opening an account*, the financial intermediary *must* request the insurance company to provide the above details of the policy holder and, if it is a different person, the details of the person actually paying the premiums, and record them in line with the requirements for establishing beneficial ownership¹ when:

- a. the assets brought into the insurance originate from a contractual relationship that pre-existed, from a time perspective, directly beforehand between the financial intermediary and the policy holder/person actually paying the premiums, or from a contractual relationship, in which this person is the beneficial owner (as defined in Form A of the CDB which is applicable); or
- b. the policy holder/person actually paying the premiums has power of attorney over, or right to receive information about, the investment account; or
- c. the assets brought into the insurance are managed according to an *investment strategy* agreed between the financial intermediary and the policy holder/person actually paying the premiums; or
- d. the insurance company does not confirm that the insurance product is set up as a life insurance product accordingly to the legal provisions, including the provisions concerning biometric risks, of the policy holder’s fiscal domicile.

If the financial intermediary establishes *in an ongoing relationship* that the policy holder/person actually paying the premiums can influence the *individual investment decisions* in other ways directly vis-à-vis the financial intermediary or indirectly via the insurance company or an appointed external asset manager, the financial intermediary *must* request the insurance company to provide the above details of the policy holder and, if it is a different person, the details of the person actually paying the premiums, and record them in line with the requirements for establishing beneficial ownership.

As long as the financial intermediary does not or cannot provide the required details, the financial intermediary must reject the initiation of a business relationship. If the financial intermediary initiates a business relationship on the basis of a confirmation on the part of the insurance company that none of the above listed cases applies, the insurance company’s confirmation must be accompanied by a description of the features, focussing on the above points a. – d. of the insurance product.

The requirements apply to insurance wrapper products whose accounts/portfolios or sub-portfolios/sub-accounts are set up after 1 January 2011. The above regulations do not apply to business relationships already in existence prior to 1 January 2011. As part of its business policy, a financial intermediary is nevertheless free to choose to apply these provisions to business relationships with life insurance companies with separately managed accounts/portfolios already in existence prior to 1 January 2011.

¹ The use of a Form A is not mandatory. The financial intermediary is free to use a self- created form for establishing the policy holder/person actually paying the premiums of an insurance wrapper.

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Audit firms are obliged to verify the compliance with these requirements from the middle of 2011.

3 Obligations of insurance companies

Insurance companies are in any event responsible for fulfilling the identification requirements, even if the business relationship has been adopted by a financial intermediary. They are responsible for duly identifying the client, determining who the beneficial owner is (where applicable) and fulfilling all other obligations relevant to the business relationship as prescribed by the Anti-Money Laundering Act.

FINMA reserves the right to verify that any confirmations made by insurance companies to financial intermediaries are correct; this also applies as part of its supervision of insurance groups or when international administrative assistance is requested.

This Newsletter replaces FINMA Newsletter 9 (2010) dated 27 April 2010.

Swiss Financial Market Supervisory Authority FINMA

Dr. Urs Zulauf
Member of the Executive Board

Léonard Bôle
Head of Section