

MARKETING FOREIGN ALTERNATIVE FUNDS IN SWITZERLAND – RULES AND PRACTICAL IMPLICATIONS

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- The marketing of foreign alternative funds (hedge, PE, VC and real estate) can no longer be conducted through the private placement exemption following the introduction of the Collective Investment Scheme Act (“CISA”) in force in March 2015.
- Swiss distribution rules state that to market to:
 - Pension funds
 - Family offices
 - Independent wealth managers
 - High Net Worth Individuals
 - Banks investing in a fund for a client outside discretionary or advisory mandates in certain instances

the fund must appoint a Swiss Representative and a Swiss Paying Agent.

- The Swiss Representative is responsible for ensuring that the Fund is distributed in compliance with Swiss rules. It acts as the local contact point for both Swiss investors and the financial regulator FINMA.
- The Swiss Representative ensures that specific mandatory disclosures are incorporated in the marketing documents (prospectus, marketing presentation and fact sheet).
- The Swiss Representative is also responsible for appointing and monitoring the distributor of the fund in Switzerland (the fund manager and/or a third party).
- Swiss Rules require that the distributor so appointed by the Swiss Rep:
 - is appropriately authorised, supervised and organised to conduct distribution activity,
 - undertakes a classification of qualified investors before promoting the fund, and
 - provides an annual confirmation of compliance with Swiss law (foreign distributor) or a copy of its annual regulatory audit report (Swiss authorised distributor).
- The Paying Agent must be a Swiss bank. Swiss regulation requires that cash transfers (subscription and redemption) between Swiss investors and the Fund be available, at the investor’s option, via a Swiss bank. In practise it is highly unlikely that this facility would be used. Regardless, the appointment of a Paying Agent is mandatory.

- Non-compliance with the Swiss regulatory requirements is a criminal offence and could lead to a civil case of mis-selling with consequential reputational damages.
- Annual cost of complying is approximately CHF 12,000 (Swiss representative & paying agent fees) and on boarding time is between 2 to 4 weeks.
- No filing, no reporting, no disclosure of proprietary information required.

Further considerations:

- Grandfathering: There are no grandfathering provisions, therefore Funds marketed prior to March 2015 with non-regulated qualified investors (Pension funds, Family offices, Independent Wealth Managers, HNWI) as existing investors, must appoint a Swiss representative and a paying agent.
- Reverse solicitation: Relying on reverse solicitation under the Swiss Rules is only possible if the reverse solicitation is genuine, i.e. it was NOT prompted by any prior action from the fund manager or a distributor.
 - “Distribution” is defined under the Swiss rules as any act or advertising for a collective investment scheme.
 - This very wide definition captures any communication oral or written mentioning the fund or any terms of the fund.
 - Therefore, providing the name or details of a fund to a Swiss prospect, negates any reverse solicitation claim.
 - Reverse solicitation if not genuine, is a breach of the Swiss Rules and is therefore a criminal offence.
 - Please note that banks, FINMA regulated insurance companies and asset managers are exempt from the Swiss Rules. As a result, you may solicit them.

Please visit our website www.armswissrep.com for further information or contact:



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