

# Self-regulation

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# Code of Conduct for the Swiss Fund Industry

30 March 2009

## I Objectives

- The present Code of Conduct has been issued by the SFA Board of Directors on the basis of FINMA Circular 09/1 Guidelines on Asset Management as minimum standards recognized by the supervisory authority pursuant to Art. 20.2 CISA, the objectives being 1
- to maintain and promote the standing of the Swiss fund industry in Switzerland and abroad; 2
  - to contribute towards the preservation and development of trust in fund products; 3
  - to ensure that the products and services offered on the Swiss fund market meet high quality standards; and 4
  - to ensure the greatest possible transparency in respect of the funds offered on the Swiss fund market. 5
- Investors who buy funds that have been authorized in Switzerland should be able to rely on these funds being highly transparent, and on them being offered and sold in a professional and objective manner. 6

## II Scope, binding force

- The Code of Conduct applies to 7
- fund management companies and SICAVs pursuant to Art. 28 et seq. and Art. 36 et seq. CISA; 8
  - representatives of foreign funds pursuant to Art. 123 et seq. CISA. 9
- The SFA may issue additional guidelines for individual types of fund (e.g. real estate funds) and in particular to cover specific themes (e.g. calculating NAVs, TER/PTR, fund performance, distribution). It may also grant funds or subfunds aimed exclusively at qualified investors full or partial exemption from individual guidelines. 10
- Any more stringent legal, regulatory, self-regulatory and/or contractual provisions applicable for fund management companies and SICAVs as well as representatives of foreign funds with regard to the respective funds will apply notwithstanding. In particular, FINMA's market behavior rules for the securities market as set down in FINMA Circular 08/38 Market Behavior Rules will apply notwithstanding. 11

This Code of Conduct is a code of professional ethics. It is based exclusively on the pertinent legal requirements and FINMA Circular 09/1 Guidelines on Asset Management. The respective private-law agreements between the parties concerned (fund management company, SICAV, custodian bank, representative) are not affected. **12**

Under the terms of the Code of Conduct, fund management companies, SICAVs and representatives of foreign funds are obliged to ensure the proper and appropriate organization of their business operations in line with their structure and business activities, in particular with regard to risk management, internal controlling systems and compliance. **13**

Fund management companies, SICAVs and representatives of foreign funds are obliged to provide open and comprehensive information on the funds they offer. They may sell their funds only via distributors that can ensure proper distribution and provision of information. **14**

This Code of Conduct must be complied with in cases where a fund management company or SICAV delegates investment decisions or other specific tasks pursuant to Art. 31 and Art. 51 CISA as well as Art. 65 CISO. Hence the rules of conduct specified under Section III below apply not only to fund management companies and SICAVs, but also to their agents. **15**

### **III Code of Conduct for Fund Management Companies and SICAVs**

Fund management companies and SICAVs must comply with the principles set down in Art. 20 CISA. **16**

#### **Art. 20 CISA Principles**

<sup>1</sup> Licensees (authorized parties) and their agents shall observe the following requirements in particular:

- a. Duty of loyalty: they act independently and exclusively in the interests of the investors;
- b. Due diligence: they implement the organizational measures that are necessary for proper management;
- c. Duty of disclosure: they ensure the provision of transparent financial statements and provide appropriate information about the collective investment schemes which they manage.

<sup>2</sup> The supervisory authority may specify minimum standards in the form of the codes of conduct of industry bodies.

### **A Duty of loyalty**

Fund management companies and SICAVs must observe the duties in respect of loyalty specified in Art. 20.1a CISA and Art. 31 CISO. **17**

#### **Art. 31 CISO Duty of loyalty**

<sup>1</sup> The licensees and their agents may only purchase investments from collective investment schemes for their own account at the market price and may only sell such investments from their own portfolios at the market price.

<sup>2</sup> In relation to services delegated to third parties they shall waive the compensation owed to them in accordance with the fund regulations, company agreement, investment regulations or discretionary management agreement where such compensation is not used for the payment of the services rendered by such third parties.

<sup>3</sup> Where investments of a collective investment scheme are transferred to another scheme of the same licensee or a scheme belonging to a related licensee, no costs may be levied.

<sup>4</sup> The licensees may not levy any issue or redemption fees if they purchase target funds which:

- a. they manage themselves directly or indirectly; or
- b. are managed by a company with which they are related by virtue of:
  1. common management,
  2. control, or
  3. a significant direct or indirect interest.

<sup>5</sup> As regards the charging of a management fee in the case of investments in target funds pursuant to Paragraph 4, Article 73.4 will apply *mutatis mutandis*.

<sup>6</sup> The supervisory authority regulates the details. It may declare Paragraphs 4 and 5 as also being applicable to other products.

Fund management companies and SICAVs must comply with the principles set down in Art. 21 CISA on investments. **18**

### Investments

#### Art. 21 CISA Investments

<sup>1</sup> The licensees and their agents pursue an investment policy that at all times corresponds with the investment characteristics of the collective investment scheme as set out in the relevant documents.

<sup>2</sup> In respect of the purchase and sale of assets and rights on their own behalf as well as that of third parties, they are only entitled to receive the fees specified in the relevant documents. Commissions and other financial benefits must be credited to the collective investment scheme.

<sup>3</sup> Assets acquired for their own account may only be purchased at market price, while any sale of own-account assets must also be at market price.

In investing the assets of the funds they manage, fund management companies and SICAVs must pursue an investment policy that corresponds at all times to the investment character as described in the relevant documents. **19**

This does not preclude a fund management company or SICAV from redefining the investment policy of a fund at any time (within the framework of the existing fund contract or investment regulations). If this results in a lasting change in the investment character of the fund, they are obliged to update the prospectus and the simplified prospectus immediately. **20**

Fund management companies and SICAVs must manage the funds they establish in accordance with the principle of equal treatment. They must refrain from favoring certain funds and/or groups of investors at the expense of others. This does not apply in the case of the different treatment of individual fund groups (retail funds, funds for qualified investors, single-investor funds), subfunds or unit classes of a fund. **21**

### Preserving and promoting the integrity of the market

Fund management companies and SICAVs must refrain from any actions that could detract from transparent and fair price formation on the investment markets. **22**

They must not engage in any investment transactions or other activities that would result in manipulation of prices. **23**

In executing securities trades and other transactions, fund management companies and SICAVs must comply with the provisions of Art. 22 CISA. **24**

### Execution of securities trades and other transactions

#### Art. 22 CISA Securities transactions

<sup>1</sup> Counterparties for securities trades and other transactions must be carefully selected. They must offer a guarantee of best execution in terms of price, time and quantity.

<sup>2</sup> The choice of counterparties must be reviewed at regular intervals.

<sup>3</sup> Agreements which curtail the freedom of decision of the licensees or their agents are not permitted.

Fund management companies and SICAVs settle transactions on the securities, foreign exchange and other markets at fair market terms. **25**

Fund management companies and SICAVs must ensure that fee splitting agreements as well as soft commissions and the services remunerated in this fashion accrue directly or indirectly to the fund (e.g. financial analysis, market and price information systems). Fund management companies and SICAVs are thus obliged to **26**

- define a clear policy regarding the use of soft commissions on stock exchange transactions conducted for the fund's account, and to set this policy down in writing; **27**

- draw up appropriate written regulations with the asset managers entrusted with the management of the fund's assets and to monitor compliance with these regulations. **28**

#### Avoidance / disclosure of conflicts of interest

Fund management companies and SICAVs must implement effective organizational and personnel measures in accordance with their size and structure, e.g. regulations on the flow of information, so as to avoid conflicts of interest between them and their agents on the one hand and the investors on the other, and to rule out the possibility of specific collective and/or individual investment schemes being placed at a disadvantage as a result of such conflicts of interest. If disadvantages cannot be ruled out despite such measures, the conflict of interest in question must be disclosed. **29**

Fund management companies and SICAVs must pursue a salary and remuneration policy that precludes any conflict of interest between its employees and the investors. They must in particular refrain from providing any financial incentive for conduct that could damage the investors' interests (e.g. bonus payments based on the volume of stock exchange transactions carried out). **30**

In respect of personal account dealing by their employees with knowledge of planned or executed transactions, fund management companies and SICAVs must issue suitable directives to prevent **31**

- conflicts of interest between the employees and the investors; **32**
- employees from being able to improperly use their knowledge or function to achieve a pecuniary gain, for example through **33**
  - front running, parallel running or after running,
  - improper use of insider information,
  - allocations in the case of new issues or IPOs;
- the standing of the fund management company or SICAV from being impaired by personal account dealing by their employees. **34**

Fund management companies and SICAVs must issue written regulations on the receipt of discounts, invitations, etc. by employees so that any influence of the said on their decisions can be ruled out. They must prohibit churning, i.e. shifts in clients' portfolios without any economic reason in the clients' interests. **35**

In exercising membership and creditors' rights, fund management companies and SICAVs must comply with the provisions of Art. 23 CISA. **36**

#### Exercising of membership and creditors' rights

Art. 23 CISA Exercising of membership and creditors' rights

<sup>1</sup> The membership and creditors' rights associated with the investments must be exercised independently and exclusively in the interests of the investors.

<sup>2</sup> Article 685d Paragraph 2 of the Code of Obligations does not apply to investment funds.

<sup>3</sup> If a fund management company manages several investment funds, the level of the participation with regard to the percentage limit set out in Article 685d Paragraph 1 of the Code of Obligations is calculated individually for each investment fund.

<sup>4</sup> Paragraph 3 also applies to each subfund of an open-ended collective investment scheme as defined in Article 92 et seq.

Fund management companies and SICAVs must issue internal guidelines regulating not only the exercising of membership and creditors' rights but also cases where such rights may be waived, and must ensure transparency that will enable investors to obtain a clear record of such exercising. **37**

In the case of scheduled routine transactions, they are free to waive the exercise of membership and creditors' rights or to delegate their exercise to the custodian bank or third parties. **38**

In the case of all other events that might have a lasting impact on the interests of the investors, such as, in particular, the exercise of membership and creditors' rights a fund management company or SICAV holds as a shareholder or creditor of the custodian bank or another related legal entity, the fund management company or SICAV will exercise the voting rights itself or issue explicit instructions. In such cases, they may base their actions on information they receive from the custodian bank, the asset manager, the company concerned or from third parties, or that they ascertain from the media. **39**

#### Participation in class actions

Fund management companies and SICAVs may, in the interests of investors, participate in class actions relating to the investments in the funds they manage. In such cases, they are free to participate themselves, appoint a proxy or assign the claims. **40**

If a fund management company or SICAV participates in class actions, they must issue an internal directive regulating the process. **41**

## **B Due diligence**

Fund management companies and SICAVs must observe the duties in respect of due diligence specified in Art. 20.1b CISA and Art. 33 CISO. **42**

#### Art. 33 CISO Due diligence

<sup>1</sup> The licensees shall ensure the effective separation of the activities of decision-making (asset management), implementation (trading and settlement) and administration.

<sup>2</sup> The supervisory authority may in justified individual instances permit exemptions or order the separation of additional functions.

#### Organizational measures

Fund management companies and SICAVs must implement the necessary organizational measures (including risk management, an internal control system, compliance) to enable the proper management of their fund business. Within the confines of the statutory and regulatory requirements pertaining to organization and personnel, they are in principle free to choose the organization in keeping with the structure and size of their business. However, they must at the least ensure that there is adequate separation of functions with regard to the following activities: **43**

- decision-making (investment decisions); **44**
- execution (trading and settlement) and **45**
- administration. **46**

The following provisions apply in the case of the delegation of tasks pursuant to Art. 31 or Art. 51 CISA as well as Articles 65 and 66 CISO: **47**

When delegating tasks, fund management companies and SICAVs must select only those agents that are adequately qualified to properly execute the task in question. Where tasks are delegated, fund management companies and SICAVs must comply with the requirements in respect of adequate separation of functions *mutatis mutandis*. **48**

Fund management companies and SICAVs must implement the measures necessary to ensure the correct instruction of their agents as well as proper supervision and monitoring of the execution of the task. They must set down the delegated activities in written contracts and must ensure appropriate and specific regulation of contact persons, responsibility, areas of competence and liability issues. Fund management companies and SICAVs must also ensure that the required rights in respect of access to books and records, issuing directives and inspections are contractually defined.	<b>49</b>
Investment decisions may only be delegated to asset managers who are subject to a recognized supervisory body, unless the supervisory authority has granted an exception (Art. 31.3 CISA).	<b>50</b>
For securities funds subject to simplified distribution in the European Union under the terms of a treaty, investment decisions may not be delegated to the custodian bank or to other companies whose interests may conflict with those of the fund management company or SICAV or the investors.	<b>51</b>
The administration of a SICAV may only be delegated to an authorized fund management company. If the board of directors of a SICAV appoints a fund management company to administer the SICAV, the rights and responsibilities of the contracting parties must be described in a written contract, to include specifically	<b>52</b>
• the tasks conferred;	<b>53</b>
• any powers for further delegation;	<b>54</b>
• the accountability of the fund management company;	<b>55</b>
• the inspection rights of the board of directors.	<b>56</b>
The SICAV must have the required rights in respect of access to books and records, issuing directives and inspections defined in the contract with the commissioned fund management company, and must ensure the necessary supervision by the board of directors of the SICAV.	<b>57</b>
Fund management companies and SICAVs must define the organization of structures and processes, internal control systems and allocations of competences in writing in a suitable form.	<b>58</b>
Particular attention is to be given to the following:	<b>59</b>
• rules of conduct and competences for extraordinary circumstances (e.g. large issues and redemptions of units, suspension of trading on investment markets, situations where the valuation of investments is impossible, valuation discrepancies);	<b>60</b>
• regulations governing access to the software used for valuation, recording of deals and controlling;	<b>61</b>
• adequate risk management;	<b>62</b>



- the valuation of the fund's assets (e.g. permitted valuation prices, the recording of interventions, plausibility checks on valuation prices), which must be made independently (as regards the issuing of directives) of the persons responsible for the investment decisions; **63**
- constant monitoring of compliance with the investment restrictions laid down in the law and the fund regulations as well as all other applicable provisions and regulatory requirements; **64**
- rules of conduct and competences for cases where in addition to engaging in the fund business, the fund management company or SICAV is at the same time active in asset management, investment advice and/or safekeeping and technical administration of collective investment schemes. **65**

Fund management companies and SICAVs must employ personnel who are properly and suitably qualified for their activity. The persons responsible for the management and the business operations of a fund management company or SICAV must have a good reputation and must guarantee proper management. **66**

The authorized signatories of a fund management company or SICAV must sign jointly. **67**

The executive board must comprise at least two persons. Such persons must have their place of residence at a location which is suitable for the proper managing of the business operations. **68**

Fund management companies and SICAVs must only work with a custodian bank which is sufficiently qualified to perform the relevant tasks properly. **69**

Fund management companies and SICAVs must conclude a contract with the custodian bank which specifically defines interfaces and responsibilities. **70**

The execution of securities trading orders by the custodian bank and any other services to be provided by the custodian bank for the fund management company or SICAV must also be contractually defined. **71**

## **C Duty of disclosure**

Fund management companies and SICAVs must observe the duties in respect of disclosure specified in Art. 20.1c CISA and Art. 34 CISO. **72**

### **Art. 34 CISO Duty of disclosure**

<sup>1</sup> The licensees shall draw investors' attention to the risks associated with a specific type of investing in particular.

<sup>2</sup> They shall disclose all costs incurred on the issue and redemption of units and in the administration of the collective investment scheme. In addition, they shall disclose the manner in which the management fee is utilized and the levying of any performance fee.

<sup>3</sup> They shall ensure a degree of transparency in relation to the exercising of membership and creditors' rights such that investors are in a position to comprehend the manner in which such rights are exercised.

## **Communication with investors**

In the sales documentation for the funds they manage, fund management companies and SICAVs must explain the investment character and investment suitability of the funds in a client-friendly (i.e. reader-friendly) form and language, making particular reference to the risks connected with a certain type of investment. **73**

However, fund management companies and SICAVs may assume that every investor is familiar with the basic risks involved in a money market, bond, equity or foreign exchange investment. The duty of disclosure thus applies to risk factors over and above these general risks, such as: 74

- general information on the specific characteristics of the type of fund in question; 75
- increased risk of price volatility in the case of specific equity funds (e.g. certain sector funds or country funds investing in emerging markets); 76
- increased risk of price volatility in the case of specific bond funds (e.g. funds investing in high-yield bonds); 77
- potential counterparty risks associated with the use of derivative financial instruments and structured products; 78
- specific risks pertaining to complex fund structures; 79
- potential liquidity risks in the markets in which the fund invests and possible consequences for the issue and redemption of units (e.g. in the case of money market funds and funds of hedge funds); 80
- special risks connected with alternative investments (warning clause). 81

In publishing performance data on the funds they manage, fund management companies and SICAVs must observe internationally recognized standards. 82

Fund management companies and SICAVs must openly disclose all fees and incidental costs incurred upon the issue and redemption of units and in the administration of the funds. They must ensure cost transparency in line with international standards. The intended use of the management fee (use for distributor fees and/or reimbursements) must be disclosed in the prospectus, and reimbursements and distributor fees may only be paid out of the management fee where specific provision has been made in the documents (Art. 38.5 and 38.6 CISO). 83

Fund management companies and SICAVs must ensure a consistent information policy that takes appropriate account of the risk potential and risk complexity and enables the investor to gain an objective picture of the development of the fund units. Fund management companies and SICAVs are free to choose the scope of the information they provide and the form in which it is delivered. 84

## **D Duties in respect of due diligence and loyalty in fund distribution**

With regard to distribution, fund management companies and SICAVs must comply with the provisions of Art. 24 CISA. 85

### **Art. 24 CISA Distribution**

<sup>1</sup> The licensees take the measures which are necessary in order to assure the legitimate acquisition of clients and the objective provision of advice to the latter.

<sup>2</sup> If they engage the services of third parties in the distribution of units in collective investment schemes, they shall conclude distribution agreements with these third parties.

Fund management companies and SICAVs must distribute their funds exclusively via distributors who can ensure proper business activities. 86

Fund management companies and SICAVs must operate remuneration systems for their distributors that promote proper client advice and the fostering of long-term relationships. **87**

Fund management companies and SICAVs must conclude distribution agreements exclusively on the basis of the Guidelines on the Distribution of Collective Investment Schemes (including the appendix Provisions for Distributors) and the model distribution agreement issued by the SFA. **88**

## **IV Code of Conduct for Representatives of Foreign Funds in Switzerland**

### **Art. 124 CISA Duties**

<sup>1</sup> The representative represents the foreign collective investment scheme with regard to investors and the supervisory authority. The representative's power of representation may not be restricted.

<sup>2</sup> The representative observes the statutory obligations to report, publish and inform, as well as the codes of conduct of industry bodies which have been declared to be the minimum standard by the supervisory authority. The representative's identity must be disclosed in every publication.

For representatives of foreign funds in Switzerland, the regulations set out under Section III C and D apply *mutatis mutandis*. **89**

## **V Entry into force**

The present Code of Conduct was approved by the SFA Board of Directors on 30 March 2009. It enters into force on 1 July 2009. There will be a transition period to 31 December 2010, during which fund management companies, SICAVs and representatives of foreign funds must carry out the necessary implementation work to amend existing contracts. **90**

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# Code of Conduct for Asset Managers of Collective Investment Schemes

31 March 2009

## I Objectives

The present Code of Conduct has been issued with the objective of serving as minimum standards recognized by the supervisory authority pursuant to Art. 20.2 CISA on the basis of FINMA Circular 09/1 Guidelines on Asset Management. 1

## II Scope, binding force

The Code of Conduct applies to asset managers of (open-end and closed-end) collective investment schemes domiciled in Switzerland that have received authorization from FINMA as asset managers of collective investment schemes pursuant to Art. 13.2f and/or Art. 13.4 CISA (referred to below as "Asset Managers"). 2

Any more stringent legal, regulatory, self-regulatory and/or contractual provisions applicable for Asset Managers with regard to the respective collective investment schemes will apply notwithstanding. In particular, FINMA's market behavior rules for the securities market as set down in FINMA Circular 08/38 Market Behavior Rules will apply notwithstanding. 3

This Code of Conduct is a code of professional ethics. It applies only to the internal relationship between Asset Managers and their Principals ('licensees' pursuant to Art. 13.2a – d CISA) and does not affect the private-law relationship between the Asset Managers and their clients. 4

## III Code of Conduct for Asset Managers of Collective Investment Schemes

Asset Managers must comply with the principles set down in Art. 20 CISA. 5

### Art. 20 CISA Principles

<sup>1</sup> Licensees (authorized parties) and their agents shall observe the following requirements in particular:

- a. Duty of loyalty: they act independently and exclusively in the interests of the investors;
- b. Due diligence: they implement the organizational measures that are necessary for proper management;
- c. Duty of disclosure: they ensure the provision of transparent financial statements and provide appropriate information about the collective investment schemes which they manage.

<sup>2</sup> The supervisory authority may specify minimum standards in the form of the codes of conduct of industry bodies.

## A Duty of loyalty

Asset Managers must observe the duties in respect of loyalty specified in Art. 20.1a CISA and Art. 31 CISO. **6**

### Art. 31 CISO Duty of loyalty

<sup>1</sup> The licensees and their agents may only purchase investments from collective investment schemes for their own account at the market price and may only sell such investments from their own portfolios at the market price.

<sup>2</sup> In relation to services delegated to third parties they shall waive the compensation owed to them in accordance with the fund regulations, company agreement, investment regulations or discretionary management agreement where such compensation is not used for the payment of the services rendered by such third parties.

<sup>3</sup> Where investments of a collective investment scheme are transferred to another scheme of the same licensee or a scheme belonging to a related licensee, no costs may be levied.

<sup>4</sup> The licensees may not levy any issue or redemption fees if they purchase target funds which:

- a. they manage themselves directly or indirectly; or
- b. are managed by a company with which they are related by virtue of:
  1. common management,
  2. control, or
  3. a significant direct or indirect interest.

<sup>5</sup> As regards the charging of a management fee in the case of investments in target funds pursuant to Paragraph 4, Article 73. 4 will apply *mutatis mutandis*.

<sup>6</sup> The supervisory authority regulates the details. It may declare Paragraphs 4 and 5 as also being applicable to other products.

## Investments and financial incentives

### Art. 21 CISA Investments

<sup>1</sup> The licensees and their agents pursue an investment policy that at all times corresponds with the investment characteristics of the collective investment scheme as set out in the relevant documents.

<sup>2</sup> In respect of the purchase and sale of assets and rights on their own behalf as well as that of third parties, they are only entitled to receive the fees specified in the relevant documents. Commissions and other financial benefits must be credited to the collective investment scheme.

<sup>3</sup> Assets acquired for their own account may only be purchased at market price, while any sale of own-account assets must also be at market price.

Asset Managers carry out their activities at their own discretion and responsibility within the framework of their legal duties and the contractually agreed duties they have accepted. **7**

In respect of the asset management of the collective investment schemes they manage, Asset Managers must ensure that the investments comply at all times with the investment characteristics agreed in the asset management agreement and the pertinent investment restrictions. **8**

Commissions and other financial benefits that Asset Managers receive in connection with the purchase and sale of assets and rights for collective investment schemes must be credited to the collective investment scheme or used to its benefit. If Asset Managers receive financial benefits in executing the mandate, they must disclose the corresponding conflict of interest to their Principal. **9**

## Preserving and promoting the integrity of the market

Asset Managers must refrain from any action that could detract from transparent and standard pricing on the securities markets. **10**

They must not engage in any investment transactions and activities that would result in a manipulation of prices. **11**

## Securities trading transactions and other transactions

### Art. 22 CISA Securities transactions

<sup>1</sup> Counterparties for securities trades and other transactions must be carefully selected. They must offer a guarantee of best execution in terms of price, time and quantity.

<sup>2</sup> The choice of counterparties must be reviewed at regular intervals.

<sup>3</sup> Agreements which curtail the freedom of decision of the licensees or their agents are not permitted.

Insofar as the Principal has not issued any instructions in this regard, the Asset Manager will decide on the selection of the counterparties via which the transactions will be settled. Such decisions must be made on the basis of objective criteria, and must safeguard the investor's interests exclusively. **12**

Asset Managers must issue orders to diligently selected counterparties, who ensure best execution overall with regard to pricing, timing and in quantitative terms and have a sufficient credit rating. **13**

The selection of counterparties is to be reviewed at regular intervals. **14**

Asset Managers must ensure that all financial market transactions are settled at terms and conditions in line with the market rates for institutional investors. **15**

## Avoidance / disclosure of conflicts of interest

Asset Managers must implement effective organizational and personnel measures in accordance with their size and structure, e.g. regulations on the flow of information, so as to avoid conflicts of interest between them and their Principal and to rule out the possibility of individual collective investment schemes being placed at a disadvantage as a result of such conflicts of interest. If disadvantages cannot be ruled out despite such measures, the conflict of interest in question must be disclosed. **16**

Asset Managers must pursue a salary and remuneration policy that precludes any conflict of interest between their employees and the investors. They must in particular refrain from providing any financial incentive for conduct that could damage the investors' interests (e.g. bonus payments based on the volume of stock exchange transactions carried out). **17**

In respect of personal account dealing by employees with knowledge of planned or executed transactions, Asset Managers must issue suitable directives to prevent **18**

a) the occurrence of conflicts of interest between their employees and their Principal; **19**

b) employees from being able to improperly use their knowledge or function to achieve a pecuniary gain, for example through **20**

- front running, parallel running or after running,
- improper use of insider information,
- allocations in the case of new issues or IPOs;

c) the reputation of the Asset Manager and their Principal from being impaired by the personal account dealing of their employees. **21**

Asset Managers must issue written regulations on the receipt of discounts, invitations, etc. by employees so that any influence of the said on their decisions can be ruled out. They must prohibit churning, i.e. shifts in clients' portfolios without any economic reason in the clients' interests. **22**

Exercising of membership and creditors' rights

Art. 23 CISA Exercising of membership and creditors' rights

<sup>1</sup> The membership and creditors' rights associated with the investments must be exercised independently and exclusively in the interests of the investors.

<sup>2</sup> Article 685d Paragraph 2 of the Code of Obligations does not apply to investment funds.

<sup>3</sup> If a fund management company manages several investment funds, the level of the participation with regard to the percentage limit set out in Article 685d Paragraph 1 of the Code of Obligations is calculated individually for each investment fund.

<sup>4</sup> Paragraph 3 also applies to each subfund of an open-ended collective investment scheme as defined in Article 92 et seq.

If the exercising of membership and creditors' rights has been delegated to the Asset Manager, the latter must comply with Art. 23 CISA. **23**

Ban on holding assets in own name

Asset Managers are not permitted to hold assets belonging to the collective investment scheme in their own name. They will at all times exercise the management of assets deposited with a bank solely on the basis of a power of attorney restricted to management transactions. **24**

Equal treatment of investors and/or groups of investors

Asset Managers must implement the organizational measures necessary to prevent the preferential treatment of certain investors and/or groups of investors at the expense of others and must set such measures down in writing. **25**

Such organizational measures are required in particular: **26**

a) in the case of allocations in respect of securities trading transactions and similar transactions, if the Asset Manager has issued collective orders prior to allocation to the individual investment schemes; **27**

b) in the charging of costs and expenses incurred in addition to the fee. **28**

**B Due diligence**

Asset Managers must observe the duties in respect of due diligence specified in Art. 20.1b CISA and Art. 33 CISO. **29**

Art. 33 CISO Due diligence

<sup>1</sup> The licensees shall ensure the effective separation of the activities of decision-making (asset management), implementation (trading and settlement) and administration.

<sup>2</sup> The supervisory authority may in justified individual instances permit exemptions or order the separation of additional functions.

Organizational measures

Asset Managers must implement the necessary organizational measures (including risk management, an internal control system, compliance) to enable them to provide proper asset management. Within the confines of the statutory and regulatory requirements pertaining to organization and personnel, they are in principle free to choose the organization in keeping with the structure and size of their business. Where required, they must ensure adequate separation of functions. **30**

Asset Managers must define the organization of structures and processes, internal control systems and allocations of competences in writing in a suitable form. **31**



Asset Managers must employ personnel who are properly and suitably qualified for their activity. The persons responsible for asset management must have a good reputation and must guarantee proper business management. **32**

The authorized signatories of the Asset Manager must sign jointly. **33**

The executive board must comprise at least two persons. Such persons must have their place of residence at a location which is suitable for the proper managing of the business operations. **34**

#### Delegation of tasks

Asset Managers acknowledge that fund management companies and SICAVs authorized by FINMA must comply with FINMA Circular 08/37 Delegation by the Fund Management Company/SICAV. **35**

Provided it is in the interests of the management of the assets, Asset Managers may, subject to the agreement of the Principal, delegate specific asset management tasks to third parties. In such instances, margin notes 19 et seq. of FINMA Circular 08/37 Delegation by the Fund Management Company/SICAV must be complied with. The third party must have the required professional qualifications to guarantee the proper execution of the delegated tasks. **36**

Asset Managers must set down the tasks delegated in written contracts. Such contracts must in particular provide appropriate regulations on inter-party contact, responsibilities, competences, checking compliance with instructions, and liability questions. Where tasks are delegated, Asset Managers must ensure that they have contractual guarantees providing the necessary scope in respect of their rights of inspection, and their rights to issue directives and carry out controls. An Asset Manager must ensure that their audit company has rights in respect of access to books and records and inspections, or must have their compliance with the Code of Conduct confirmed by an audit company recognized by FINMA or subject to supervision equivalent to that of FINMA. **37**

Compliance with the present Code of Conduct must be ensured in the case of delegation. Asset Managers must have contractual guarantees either that their agents are subject to corresponding regulations in their area of activity or that the agents undertake to comply with the provisions of this Code of Conduct *mutatis mutandis* in performing the delegated functions. **38**

Asset Managers must take the necessary measures to ensure the proper selection and instruction of their agents. The agents must, in particular, know the applicable laws, provisions and regulations. **39**

Asset Managers must supervise and monitor the performance of the delegated tasks. **40**

No costs not covered by the written asset management contract may arise for the collective investment scheme as a result of such delegation. In particular, the costs for services rendered may not be passed on if these have already been covered by the agreed asset management fee. **41**

## C Duty of disclosure

Asset Managers must observe the duties of disclosure in respect of their Principal specified in Art. 20.1c CISA and Art. 34 CISO. **42**

### Art. 34 CISO Duty of disclosure

<sup>1</sup> The licensees shall draw investors' attention to the risks associated with a specific type of investing in particular.

<sup>2</sup> They shall disclose all costs incurred on the issue and redemption of units and in the administration of the collective investment scheme. In addition, they shall disclose the manner in which the management fee is utilized and the levying of any performance fee.

<sup>3</sup> They shall ensure a degree of transparency in relation to the exercising of membership and creditors' rights such that investors are in a position to comprehend the manner in which such rights are exercised.

### Duties of the Asset Manager in respect of reporting and the provision of information

Asset Managers must comply with the reporting obligations specified by the Principal. **43**

If the Asset Manager is involved in calculating (and publishing) the performance data for the collective investment schemes they manage, they must comply with internationally recognized standards in respect of **44**

a) the calculation method; **45**

b) an appropriate period (e.g. 1, 3 and 5 years as well as since the launch of the collective investment scheme); **46**

c) the selection of suitable benchmarks. **47**

They must disclose any deviations from the standard automatically as part of their financial reporting. **48**

Asset Managers must inform their Principal in an appropriate manner about **49**

a) potential conflicts of interest; **50**

b) the investment process, investment strategies, risk factors (e.g. any liquidity problems), use of derivatives, structured products etc.; **51**

c) significant changes in personnel or in the organization. **52**

### Form and content of the agreement

Asset Managers must conclude a written agreement with the Principal on their respective rights and obligations and the other terms of the service to be performed. **53**

The written agreement must specifically contain information on the following points: **54**

a) Scope of the Asset Manager's powers; **55**

b) Investment objectives and restrictions pursuant to the pertinent provisions set down in the documents of the collective investment scheme; **56**

c) Reference currency pursuant to the pertinent provisions set down in the documents of the collective investment scheme; **57**

d) permitted investments, investment techniques and the use of derivatives and structured products; **58**

- |    |  |           |
|----|--|-----------|
| e) | Method and frequency of provision of financial statements to the Principal;                                  | <b>59</b> |
| f) | Type, structure and components of the remuneration of the Asset Manager, taking into account Art. 21.2 CISA; | <b>60</b> |
| g) | Possibility of delegating tasks to third parties.  | <b>61</b> |

#### **IV Other provisions**

The present Code of Conduct was approved by the SFA Board of Directors on 31 March 2009. It enters into force on 1 July 2009. There will be a transition period to 31 December 2010, during which the Asset Manager must carry out the necessary implementation work to amend existing contracts.	<b>62</b>
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The present Code of Conduct will be reviewed and adjusted regularly in line with national and international developments.	<b>63</b>
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# **Guidelines on the valuation of the assets of collective investment schemes and the handling of valuation errors in the case of open-end collective investment schemes**

20 June 2008

## **I Basic principles, aims and binding force**

These guidelines are part of the self-regulatory measures implemented by the Swiss fund sector, and are subordinate to the Code of Conduct for the Swiss Fund Industry issued by the SFA. **1**

The guidelines are aimed at ensuring the uniform implementation of the legal provisions on the valuation of the assets of collective investment schemes, the calculation of net asset values, and the issue and redemption of units in the case of open-end collective investment schemes. They also set down general principles for the handling of valuation discrepancies in the case of open-end collective investment schemes. **2**

The guidelines apply to Swiss fund management companies pursuant to Art. 28 et seq. CISA and investment companies with variable capital (SICAVs) pursuant to Art. 36 et seq. CISA in respect of **3**

- securities funds pursuant to Art. 53 et seq. CISA, and **4**
- other funds for traditional and for alternative investments pursuant to Art. 68 et seq. CISA. **5**

The guidelines apply to investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seq. CISA only with regard to the valuation of the assets of the collective investment scheme for financial statements (cf. Art. 117 CISA). **6**

Compliance with the present guidelines must also be ensured where tasks are delegated. The fund management company or SICAV/SICAF must ensure that its agents implement the provisions of the present guidelines in full in carrying out the functions delegated to them. **7**

## **II Guidelines**

### **A Valuation of the assets of collective investment schemes**

#### Principles

1. The assets of collective investment schemes are to be valued at their current market value. In the case of assets traded on a stock exchange or another regulated market open to the public (referred to below collectively as "exchanges"), this corresponds to the market price, which is in principle taken as being the last price paid. **8**

2. If trading takes place on more than one exchange, the last price paid on the main market is to be used (Art. 88.1 CISA). **9**

If there is no paid price available for the main market, a paid price from a representative secondary market may be used instead. Such prices must be checked for plausibility against the bid and ask prices available on the main market. **10**

### Deviations / special cases

3. Assets for which there is no reliable price, or which are not traded on an exchange, are to be valued at the price that would probably be obtained in a diligent sale at the time of valuation (Art. 88.2 CISA). The following methods may be used to determine such prices (please note that this is not an exhaustive list): **11**

#### *Shares and other equity-type securities and rights*

- Enquiries with a number of different brokers that are independent of each other. **12**

#### *Bonds and other debt securities and rights (including discounted paper)*

- Valuation on the basis of the current price of securities which are comparable in terms of maturity and credit rating and are traded on an exchange, or **13**
- Valuation on the basis of the current market return on comparable securities. **14**

#### *Convertible and warrant bonds*

- Valuation on the basis of the price or the calculated value of the individual components. **15**

#### *Units and shares of other open-end collective investment schemes that are issued and redeemed on a daily basis*

- Valuation in principle at the net asset value. **16**

#### *Units and shares of other open-end collective investment schemes that are not issued and redeemed on a daily basis*

- Valuation on the basis of the last reported net asset value, taking into account any market fluctuations which have occurred. **17**

#### *Structured products*

- Valuation on the basis of the prices of the underlying assets using appropriate valuation models that are recognized in practice (Art. 28.3 in conjunction with Art. 34.2 CISO-SFBC). **18**

#### *Derivative financial instruments*

- Valuation on the basis of the prices of the underlying assets using appropriate valuation models that are recognized in practice (Art. 34.2 CISO-SFBC). **19**

*Mortgage investments*

- Valuation on the basis of recognized guidelines for mortgage investments. **20**

*Private equity holdings*

- Valuation on the basis of internationally recognized standards for the valuation of such companies and projects (Art. 58.1 CISO-SFBC). **21**

*Money market instruments (i.e. instruments with an original term to maturity or interest rate adjustment period of up to 12 months)*

- Valuation at cost, with straight-line deferment of the difference vis-à-vis the redemption price until maturity. In the case of more marked changes in the market environment or the credit rating of the asset, the valuation is to be adjusted accordingly. **22**

*Other assets and liabilities held by a collective investment scheme*

- Bank deposits at sight and term deposits (including fiduciary investments), claims, etc., are to be valued at their nominal value. If the credit rating of the asset changes, the valuation is to be adjusted accordingly. Broken-period interest is to be deferred to each valuation day. **23**

- Liabilities (e.g. debit interest) and accrued costs are to be deferred to each valuation day. **24**

4. For the translation of the prices of assets denominated in foreign currencies, the middle rates supplied by a recognized quotation service are to be used. **25**

Organizational measures

5. The valuation of the assets is to be conducted by a unit which is independent from those responsible for the asset management and securities trading in respect of the collective investment scheme (cf. Code of Conduct for the Swiss Fund Industry). **26**

6. The prices used for the valuation must be drawn from a recognized external source which is independent of the fund management company or the SICAV/SICAF and its agents. Once selected, the price source and the times at which prices are recorded may only be changed in justified exceptional cases. Any deviations must be readily verifiable at all times and must be officially documented. **27**

7. In the case of assets that cannot be satisfactorily valued through external sources or the methods listed under section 3 above, a valuation by the asset manager may be used in justifiable exceptional cases pertaining to a minor portion of the assets of a collective investment scheme. Valuations made by the asset manager must be readily verifiable by the fund management company or the SICAV/SICAF at all times and must be officially documented. In the case of additional purchases and partial sales, the valuation price delivered by the asset manager and used previously is to be compared with the actual transaction price and adjusted where necessary. **28**

8. The prices received from external sources are to be subjected to a plausibility check prior to the calculation of the net asset value. This applies especially to unlisted assets **29**

and/or assets that are seldom traded. In checking the reliability of the prices supplied, the fund management company or the SICAV/SICAF focuses on criteria including the following (the situations given in parentheses can be indications of erroneous prices or prices unsuitable for valuation purposes):

- deviations in price compared with the previous day and compared with the actual prices of additional purchases and partial sales (the deviations exceed certain tolerance levels or the reported price has remained unchanged for several days); **30**
- ensuring the last paid price is up to date (reported price is dated several days previously). **31**

If the fund management company or the SICAV/SICAF identifies an instance where a supplied price may be erroneous, or if, for other reasons, it regards the prices received from the external source as being inadequate for the valuation of the assets of the collective investment scheme, it may set the prices itself in accordance with a recognized method (see section 3 for examples). All deviations from the prices received from the external source must be readily verifiable at all times and are to be officially documented accordingly. **32**

## **B Calculating the net asset value of open-end collective investment schemes**

### Basic principle

9. The net asset value per unit is determined by the market value of the assets, minus all the fund's liabilities, divided by the number of units in circulation (Art. 83.2 CISA). In calculating the net asset value, all assets and liabilities held by the open-end collective investment scheme at the moment in question are to be taken into account. Adequate provision is to be made for transactions which have been concluded but not yet settled, as well as for pending corporate actions. **33**

### Organizational measures

10. The calculated net asset values and the issue and redemption prices of the units are to be systematically checked (i.e. validated) before publication. The following measures, among others, can be used to identify errors: **34**
  - plausibility check of the calculated net asset value, e.g. by comparison with the prior calculation (where the change is not plausible, the prior valuation is to be checked as well); **35**
  - regular matching of holdings with the custodian bank. **36**

## **C Issue and redemption of units**

### Using the forward pricing method for the issue and redemption of units

11. The forward pricing method is to be used for the issue and redemption of units. With this method, orders for the acquisition and redemption of units received by a certain time (cut-off time) are settled by the fund management company/SICAV at a net asset **37**



value it determines on the basis of market prices paid after the cut-off time. For the purposes of determining the net asset value, assets for which there are no reliable market prices are also to be valued for a point in time **after** the cut-off time in accordance with section 3 of these guidelines.

In setting the cut-off time, the fund management company/SICAV takes into account the trading hours on the exchanges on which the open-ended collective investment scheme's investments are traded. **38**

It values the assets of the open-end collective investment scheme at market prices paid **after** the cut-off time. **39**

If trading on an exchange closes in the morning or early afternoon Swiss time, the fund management company/SICAV may use prices that are already known at the cut-off time for accepting orders for the valuation. If the investments of an open-end collective investment scheme valued in this manner exceed 25% of its assets, the fund management company/SICAV must adjust the valuation in line with the developments known in the meantime which could have a relevant impact on the net asset value (cf. section 13 and 15). **40**

Any regulations in deviation from the above (e.g. historic pricing) are only permitted in the case of open-end collective investment schemes whose portfolios have an actual overall duration of up to 12 months. Exceptions in this regard are marked changes in the interest-rate and credit risks (cf. section 3, Money market instruments). **41**

The fund management company/SICAV must explain in the prospectus the conditions for the issue and redemption of units, as well as the principles for valuing the assets of the open-end collective investment scheme. **42**

### Exchange-traded funds

12. In the case of exchange-traded funds, the fund management company/SICAV must appoint a market maker which must ensure that the difference between the net asset value – which is continually updated – and the current stock exchange price does not exceed a certain threshold limit. **43**

### Deferral of repayment / suspension of the issue of units

13. Pursuant to Art. 110.1 CISO, in the cases envisaged in the fund regulations, the repayment may be temporarily deferred if a significant proportion of the assets of an open-end collective investment scheme can no longer be valued. In the cases listed under clauses a to c, units are also not to be issued. Depending on the reasons for which the calculation of the net asset value is impossible, a distinction is to be drawn between: **44**

#### *ordinary situations such as*

- regular exchange holidays in one or more investment countries, provided there are no special political or economic developments that could result in a considerable change in prices once trading resumes, and **45**

*extraordinary situations such as*

- instances where a market in one or more investment countries is likely to be closed for a lengthy period, or instances where there are restrictions on foreign exchange and asset transfers or other factors which prevent the normal functioning of the market.

46

14. In ordinary situations, the fund management company/SICAV can maintain the issue and redemption of units for as long as the majority of the assets (in terms of value) can be valued properly. In determining the majority of the assets in terms of value, the last point in time when the assets of the open-end collective investment scheme could still be valued properly is to be taken as the basis.

47

15. In extraordinary situations, the fund management company/SICAV will decide on a deferral of repayments and suspension of the issue of units on a case-by-case basis. As a general rule of thumb, the repayment should be deferred and the issue of units suspended if the proportion of the assets that cannot be valued exceeds 10% of the assets of the open-end collective investment scheme. In determining the 10% of the assets of the open-end collective investment scheme, the last point in time when the assets of the collective investment scheme could still be valued properly is to be taken as the basis.

48

The fund management company/SICAV together with the custodian bank must prepare strategic measures for such situations that will enable it to act quickly in the interests of the investors and fulfill its duty to disclose information.

49

## **D Procedure in the case of valuation errors (cf. Appendices 1 and 2)**

### Definition

16. In principle, any difference between a published net asset value and the correct net asset value determined subsequently is deemed to be an error if it would have resulted in a different net asset value when rounded off as defined in the fund regulations. If the issue and redemption prices include or are net of the open-end collective investment scheme's incidental costs incurred in the purchase and sale of assets, the difference is based on these prices.

50

### Organizational measures

17. The fund management company/SICAV must implement effective organizational measures to enable it to identify, as quickly as possible, errors in the valuation of the assets and in the calculation of the net asset value or the issue and redemption prices of the open-end collective investment scheme (cf. section 10), and to rectify the causes of such errors.

51

The fund management company/SICAV must keep a record of all errors that occur that are directly connected with the calculation of the net asset value as well as the measures implemented to prevent a reoccurrence of the same error. It will allow the custodian bank and the auditors to inspect the error reports at any time.

52

The steps to be taken when errors occur are outlined in Appendix 1.

53

Assessing the significance of errors

18. When errors occur, the decision on the steps to be taken depends primarily on whether the errors are deemed to be significant or insignificant. **54**

An error is deemed to be significant if the percentage difference between the initially determined net asset value and the correct, rounded-off net asset value determined subsequently or the issue or redemption price exceeds the following limits (as a percentage of the correct value or price): **55**

Open-end collective investment schemes by type of investment	Majority of investments in established markets	Majority of investments in emerging markets	<b>56</b>
Money market funds	0.25%	0.375%	
Bond funds	0.5%	0.75%	
Equity funds	1.0%	2.0%	
Convertible bond funds as well as asset allocation funds with equity weightings below 50%	0.75%	1.375%	
Asset allocation funds with equity weightings above 50%	1.0%	2.0%	

In the case of other funds for alternative investments, the fund management company/SICAV will issue an internal guideline defining the parameters for assessing the significance of errors (cf. section 24). **57**

Measures to be taken in the case of errors deemed to be insignificant

19. In the case of errors deemed to be insignificant, the fund management company/SICAV will implement the measures envisaged in the internal guideline. In the case of recurring errors, errors that remain undetected for longer periods of time and errors in excess of a certain volume, the board of directors is to be formally informed by the executive management through the official channels. **58**

Measures to be taken in the case of errors deemed to be significant

20. Every error deemed to be significant is to be reported immediately to the custodian bank, the auditors and the supervisory authority. The report of the fund management company/SICAV in such instances must include the following information: **59**
- the scope and cause of the erroneous valuation; **60**
  - the corrective measures implemented or an application for approval of such corrective measures; **61**
  - the damage caused to the open-end collective scheme on the one hand and the investors on the other. **62**

<sup>1</sup> The limits stated under section 18 take into account aspects such as the risk/return profile, the daily price volatility and the usual bid/ask spread in the respective investment markets.

	Depending on the scope of the erroneous valuation and the damage arising as a result, the fund management company/SICAV must also observe its duty to disclose information to foreign supervisory authorities in countries where the open-end collective investment scheme in question is approved for distribution, as well as to the investors and distribution partners.	<b>63</b>
21.	If <b>no</b> units were issued and/or redeemed on the basis of the erroneous net asset value, the measures to be implemented will be limited to compiling an error report and observing reporting obligations pursuant to section 20.1.	<b>64</b>
22.	If units were issued and/or redeemed on the basis of the erroneous net asset value, the fund management company/SICAV must at least cancel all transactions that were settled on the basis of the erroneous net asset value to the detriment of investors, and settle these transactions on the basis of the corrected net asset value. Section 23 notwithstanding, it will indemnify both the investors affected and the open-end collective investment scheme concerned.	<b>65</b>
23.	In minor cases where the resulting difference amounts to less than 50 Swiss francs per investor, the fund management company/SICAV may apply to the supervisory authority to be released from its obligation to cancel the settlements in question. However, the open-end collective investment scheme affected is to be indemnified in all cases.	<b>66</b>
<b>E</b>	<b>Internal directive</b>	
24.	The fund management company/SICAV will issue an internal directive setting down the principles and the operational procedures for valuing the open-end collective investment scheme's assets. The said directive will be specifically tailored to the requirements of its organizational structure and the range of funds offered, and must cover at least the following points:	<b>67</b>
	• structural organization and business processes, control systems (section 5);	<b>68</b>
	• access to the software used for valuation and booking;	<b>69</b>
	• the pertinent main markets and the price sources to be used (sections 1 and 6);	<b>70</b>
	• criteria for the plausibility checks of valuation prices (including tolerance levels for price deviations compared with the previous day, maximum tolerated "age" of prices) (section 8);	<b>71</b>
	• determining the frequency of the regular matching of holdings with the custodian bank (section 10);	<b>72</b>
	• measures, decision-making authority and the documentation of the necessary deviations from the standard external price sources used (sections 7 and 8);	<b>73</b>
	• methods for valuing positions that cannot be satisfactorily valued through external sources (section 3);	<b>74</b>
	• determining the threshold values for more marked changes in the market environment or a change in the credit rating of money market instruments (section 3);	<b>75</b>

- criteria for the deferral of repayment and the suspension of the issue of units, corresponding measures and decision-making authority, taking particular account of the obligations to provide information to the supervisory authorities, auditors, the custodian bank, asset manager, distribution partners and investors (section 13 et seq.); **76**
- measures and decision-making authority when errors occur (including documentation, internal reporting), as well as the obligations to disclose information to the supervisory authorities, auditors, the custodian bank, distribution partners and investors (sections 17 and 19 et seq.); **77**
- specific definition of recurring errors, errors that remain undetected for longer periods of time and errors in excess of a certain volume (section 19); **78**
- framework for assessing the significance of valuation errors in the case of other funds for alternative investment (section 18). **79**

### **III Other provisions**

#### **A Implementation by the custodian bank**

The custodian bank will ensure that the fund management company/SICAV complies with the law, the fund regulations and the present guidelines in calculating the net asset value of the units. **80**

#### **B Minimum standard**

The supervisory authority has recognized these guidelines as a minimum standard (SFBC Circular 04/2 Self-Regulation as Minimum Standard). **81**

#### **C Entry into force and transitional provisions**

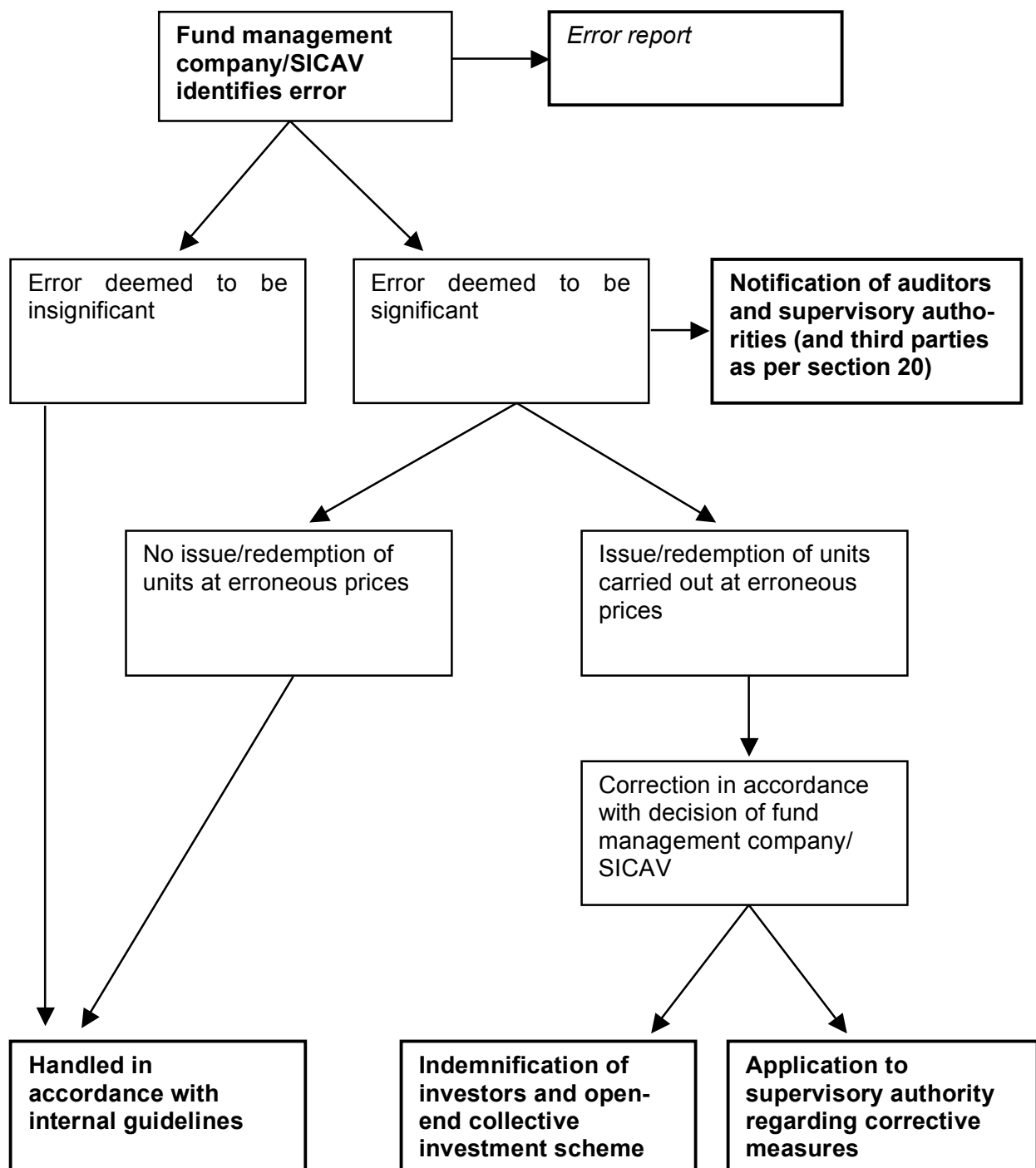
These guidelines were approved by the Board of Directors of the Swiss Funds Association SFA on 20 June 2008 and enter into force on 1 July 2008. **82**

In respect of section 11, there will be a transitional period of 12 months from the date these guidelines enter into force. **83**

Existing internal directives pursuant to section 24 must be amended in line with the changed provisions of these guidelines within six months of the entry into force. **84**

## Appendix 1 Guidelines on the valuation of the assets of collective investment schemes and the handling of valuation errors in the case of open-end collective investment schemes

### Measures to be implemented in the case of erroneous prices (supplement to section 17 et seq.)



## Appendix 2 Guidelines on the valuation of the assets of collective investment schemes and the handling of valuation errors in the case of open-end collective investment schemes

### Framework for assessing corrective measures in the case of erroneously calculated net asset values (supplement to section 23)

	Measures affecting the <b>investor</b>	Measures affecting the <b>open-end collective investment scheme</b>	Compensation by the <b>fund management company/SICAV</b>
<u>NAV too high</u> Unit issues	Refund of the excess amount paid	Refunds to investors are debited	—
Unit redemptions	The excess amount credited on payment of the redemption price is reclaimed (debited)	Amounts reclaimed from investors and the fund management company/SICAV are credited	Amount not covered by sums reclaimed from investors is credited immediately
<u>NAV too low</u> Unit issues	The shortfall is subsequently debited	Subsequent payments by the investors and the fund management company/SICAV are credited	Amount not covered by subsequent payments by the investors is credited immediately
Unit redemptions	Refund of the shortfall in the redemption price received	Refunds to investors are debited	—

In the case of erroneously calculated net asset values in favor of the investors (NAV too low in the case of unit issues or too high in the case of unit redemptions), corrective measures affecting the investors may be waived. However, the open-end collective investment scheme is to be indemnified in all cases.

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# Guidelines on the calculation and disclosure of the TER and PTR of collective investment schemes

16 May 2008  
(Version of 12 August 2008)

## I Basic principles, aims and binding force

According to the Code of Conduct for the Swiss Fund Industry issued by the SFA, fund management companies pursuant to Art. 28 et seq. CISA, investment companies with variable capital (SICAVs) pursuant to Art. 36 et seq. CISA, investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seq. CISA and representatives of foreign collective investment schemes pursuant to Art. 123 et seq. CISA in Switzerland must ensure cost transparency in line with international standards. 1

These guidelines are aimed at ensuring the uniform implementation of this provision with regard to the costs and commissions incurred in connection with the management of collective investment schemes, thereby contributing to the highest possible pricing transparency for the collective investment schemes offered on the Swiss market. The guidelines are to be used for all collective investment schemes authorized in Switzerland with the exception of the limited partnership for collective investment and real estate funds. 2

Materially, these guidelines are based on the principles set down by EFAMA (the European Fund and Asset Management Association) and on the recommendations of the European Commission. 3

## II Guidelines

### Total Expense Ratio (TER)

#### A Standard ratio

##### 1. Basic principle

The costs and commissions charged on the management of collective investment schemes are to be disclosed using the internationally recognized Total Expense Ratio (TER). This ratio expresses the sum of all costs and commissions charged on an ongoing basis to the collective investment scheme's assets (operating expenses) taken retrospectively as a percentage of the net assets, and is in principle calculated using the following formula: 4

$$\text{TER\%} = \frac{\text{Total operating expenses in CU}^*}{\text{Average net assets in CU}^*} \times 100 \quad 5$$

\* CU = currency units in the accounting currency of the collective investment scheme

## 2. Frequency of calculation

The TER is to be calculated for the preceding 12 months at the close of the annual and semi-annual accounts, i.e. either **6**

- for the financial year just ended, or **7**
- for the first half of the current financial year and the second half of the preceding financial year. **8**

The calculation is to be based on the costs and commissions listed in the income statement. **9**

The calculation methods for newly launched collective investment schemes and in cases where collective investment schemes are restructured are detailed under sections 8 and 9 below. **10**

## 3. Operating expenses

All costs and commissions charged to the collective investment scheme during the reporting period are to be included in the TER, such as: **11**

- Commission charged by the fund management company / SICAV / SICAF or the management company; **12**
- Commission charged by the custodian bank; **13**
- Other expenses as recognized in the income statement, provided they are not included in the above positions, e.g.: **14**
  - commission / costs for administration, **15**
  - commission / costs for asset management or advice, **16**
  - performance-related fee paid to the asset manager (cf. section 5), **17**
  - commission / costs for distribution, **18**
  - fees for supervising the collective investment scheme, **19**
  - costs for the calculation of the NAV, **20**
  - costs for publications, **21**
  - costs for auditing, **22**
  - costs for legal advice, **23**
  - other expenses; **24**
- Taxes and duty (e.g. taxe d'abonnement); **25**

or alternatively: 26

A flat-rate remuneration to the fund management company / SICAV / SICAF or management company plus any additionally charged commissions, remunerations, costs, fees and duty. 27

Essentially the operating expenses correspond to the expense side of a collective investment scheme's income statement excluding the negative investment income (e.g. interest payable) and accruals and deferrals (e.g. payment of current income). Costs and commissions that form part of the operating expenses may not be offset against the investment income. 28

The incidental costs incurred by the collective investment scheme on the purchase and sale of investments are not included in the operating expenses. These are integral to the investments themselves and accrue to the realized capital gains / losses on the sale of the investments. 29

#### 4. Average net assets

The average net assets are defined as the arithmetic mean of the net assets on a given valuation day calculated using the following formula: 30

$$\text{Average net assets in CU}^* = \frac{\sum \text{net assets on } n \text{ valuation days}}{n} \quad 31$$

\* CU = currency units in the accounting currency of the collective investment scheme

## B Special cases

#### 5. Collective investment schemes paying a performance-related fee to the asset manager

If a performance-related fee is paid to the asset manager, this remuneration is to be included in the TER and stated separately as a percentage of the average net assets. 32

#### 6. Composite (synthetic) TER in the case of acquisitions of units of other collective investment schemes (target funds)

If a collective investment scheme invests at least 10% of its net assets as a fund of funds in other collective investment schemes (target funds) which publish a TER within the meaning of the present guidelines, a composite (synthetic) TER of the fund of funds is to be calculated as of the closing date of the financial year or the end of the first half of the financial year. This corresponds to the sum of 33

- the prorated TER of the individual target funds, weighted on the basis of their proportion in the net assets of the fund of funds as of the closing date, 34
- the issue and redemption commissions of the target funds actually paid, and 35
- the TER of the fund of funds minus the reimbursements received from the target funds during the reporting period. 36

If any of the target funds does not publish a TER pursuant to the present guidelines, the following procedure must be followed when disclosing the costs incurred by the fund of funds: **37**

- Reference must be made to the fact that no composite (synthetic) TER can be determined for the respective portion of the fund of funds. **38**
- A composite (synthetic) value must be indicated for the overall costs that the fund of funds is expected to incur. To this end **39**
  - a truncated (synthetic) TER is calculated which – weighted on the basis of the fund of fund's investment proportion – includes the TERs of all target funds for which the TER is determined as per the present guidelines (i.e. target funds with TER), and **40**
  - to this are added for each of the other target funds (i.e. target funds without TER) the issue and redemption commissions plus as precise as possible an estimate of the upper limit of the costs relevant for the TER. This value – weighted on the basis of the target funds' weighting in the fund of fund – must include the maximum management fee and the most recent performance-related management fee available for this target fund. **41**

If a collective investment scheme pursuant to Art. 68 and Art. 110 CISA invests a significant portion of its net assets in target funds which do not publish a TER as per the present guidelines or for which no current TER is available (e.g. hedge funds), a calculation is to be waived and a corresponding explanation published. **42**

#### 7. Changes to the percentage rates of the management fee and/or custodian bank fee

If the management fee and/or the custodian bank fee have been changed during the reporting period or between the end of the reporting period and the publication of the TER, attention must be drawn to this fact in a corresponding footnote. **43**

#### 8. Initial publication of the TER for newly launched collective investment schemes

In the case of newly launched collective investment schemes, the TER is to be calculated for the first time on the basis of the income statement published in the first annual or semi-annual report. Where necessary, the operating expenses are to be annualized. The average value for the net assets is taken as the mean of the month-end values during the reporting period. **44**

$$\text{Annualized operating expenses in CU}^* = \frac{\text{Operating expenses in n months}}{n} \times 12 \quad \mathbf{45}$$

\* CU = currency units in the accounting currency of the collective investment scheme

#### 9. Restructuring of collective investment schemes

In cases where a collective investment scheme is restructured, the historical TER is only to be used if historical performance data are also published. Similarly, in cases where collective investment schemes are merged, the TER is to be calculated for the collective investment scheme whose historical performance is taken over. **46**

If a new collective investment scheme is created as the result of restructuring or a merger, and no meaningful historical performance data can be produced for this new collective investment scheme, no TER is to be calculated until the first annual or semi-annual report is issued for the corresponding collective investment scheme. **47**

10. Collective investment schemes with subfunds (umbrella funds)

In the case of an umbrella fund, the TER for each subfund is to be calculated and published in accordance with these guidelines. **48**

11. Collective investment schemes with several unit classes

If collective investment schemes charge different costs and commissions to their assets for individual unit classes, a separate TER is to be calculated for each unit class on the basis of the income statement issued for the class concerned. **49**

## Portfolio Turnover Rate (PTR)

### A Standard ratio

12. Basic principle

As an indicator of the relevance of the additional costs incurred by a collective investment scheme when buying and selling investments, the internationally recognized Portfolio Turnover Rate (PTR) is to be disclosed in accordance with the standard method outlined below: **50**

$$\text{PTR} = \frac{(\text{Total 1} - \text{total 2})}{\text{Average net assets in CU}^*} \times 100 \quad \mathbf{51}$$

\* CU = currency units in the accounting currency of the collective investment scheme

Total 1 = total securities transactions = X + Y **52**  
 Securities purchases in CU = X  
 Securities sales in CU = Y

Total 2 in CU = total transactions involving units of the collective investment scheme = S + T **53**  
 Units issued in CU = S  
 Units redeemed in CU = T

13. Frequency of calculation

The PTR is to be calculated for the same period as the TER. **54**

14. Average net assets

The average net assets are calculated in accordance with section 4 of these guidelines. **55**

## **B Special cases**

Where appropriate, the special cases described with regard to the Total Expense Ratio (TER) apply *mutatis mutandi*. **56**

## **Publication of the TER and PTR**

### 15. Publication of the ratios

The publication of the ratios is governed by the applicable provisions. **57**

### 16. Disclosure of costs and commissions in the fund regulations, prospectus and simplified prospectus

The disclosure of costs and commissions in the above publications is governed by the applicable provisions. **58**

## **III Other provisions**

### **A Minimum standard**

The supervisory authority has recognized these guidelines as a minimum standard (SFBC Circular 04/2 Self-Regulation as Minimum Standard). **59**

### **B Entry into force**

These guidelines were approved by the Board of Directors of the Swiss Funds Association SFA on 16 May 2008 and enter into force on 1 July 2008. **60**

**Appendix:** Calculation example – calculating and publishing the TER **61**

## Appendix to the guidelines on the calculation and disclosure of the TER and PTR of collective investment schemes

### Example: calculation and publication of the TER

#### Scenario

Close of accounts of the collective investment scheme:	30 June	1
Management fee charged by fund management company / SICAV / SICAF:	until 30.06.07: 1.5% from 01.07.07: 2.0%	2
Average net assets for the period 31.12.06 - 31.12.07:	77,142,857 CU*	3

#### Excerpt from income statement

Expenses (in CU* 1,000)	31.12.06 Semi-annual report	30.06.07 Annual report	31.12.07 Semi-annual report	4
Fee charged by fund management company / SICAV / SICAF	500	1 200	650	
Performance-related fee	0	100	0	
Custodian bank fee	75	160	80	
Other expenses	50	120	70	
Taxes	12	25	13	
Total operating expenses	637	1 605 (H2: 968)	813	

#### Calculating the TER for the 12 months from 31.12.2006 to 31.12.2007

TER including the performance-related fee 5

$$\text{TER \%} = \frac{(968\,000 \text{ CU}^* + 813\,000 \text{ CU}^*)}{77\,142\,857 \text{ CU}^*} \times 100 = 3.31\% \quad 6$$

Performance-related fee as a percentage of the average net assets 7

$$\% = \frac{(100\,000 \text{ CU}^* + 0 \text{ CU}^*)}{77\,142\,857 \text{ CU}^*} \times 100 = 0.13\% \quad 8$$

\* CU = currency units in the accounting currency of the collective investment scheme

#### Publication of the TER

The TER is to be published including the performance-related fee together with the date (as of 31 December 2007) and a reference to the increase in the management fee charged by the fund management company / SICAV / SICAF from 1.5% to 2.0% as of 1 July 2007. In addition the performance-related fee is to be stated separately as a percentage of the average net assets. 9

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# Guidelines on the calculation and publication of performance data of collective investment schemes

16 May 2008

## I Basic principles, aims and binding force

According to the Code of Conduct for the Swiss Fund Industry issued by the SFA, fund management companies pursuant to Art. 28 et seq. CISA, investment companies with variable capital (SICAVs) pursuant to Art. 36 et seq. CISA, investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seq. CISA and representatives of foreign collective investment schemes pursuant to Art. 123 et seq. CISA (also referred to below as "licensees of collective investment schemes") must observe internationally recognized standards when publishing performance data. 1

The present guidelines are intended to ensure that this provision is implemented consistently, and thus help achieve the following objectives: 2

- to ensure the greatest possible degree of transparency and comparability among the collective investment schemes offered to the public on the Swiss market, 3
- to ensure that investors receive objective, sound information, and 4
- to ensure that the information available on performance (information which is very important for market participants) is highly credible. 5

The guidelines apply to all collective investment schemes authorized in Switzerland. 6

The content of these guidelines is based on international standards (e.g. Global Investment Performance Standards, GIPS). 7

## II Guidelines

### Introduction

**The present guidelines are restricted to the most significant issues. Where no specific rules are laid down, licensees of collective investment schemes must present information in accordance with the spirit of the objectives underlying these guidelines.** 8

### A Calculating performance

#### 1. Basic principle

With the exception of the cases specified in section 3 below, the performance of a collective investment scheme is defined as the total return of one unit over a specified period, expressed in the collective investment scheme's accounting currency. This figure is expressed as a percentage of the net asset value per unit at the beginning of the observation period, 9

and is calculated as follows:

Collective investment scheme that pays no distribution during the observation period **10**

• change in net asset value per unit **11**

Collective investment scheme that pays a distribution during the observation period **12**

• change in net asset value per unit, under the assumption that **13**

the gross amount of income and/or capital gains distributed is immediately reinvested in the collective investment scheme without deductions (taxes, commissions, etc.). **14**

Swiss collective investment schemes with reinvestment of income **15**

• change in net asset value per unit, under the assumption that **16**

the Swiss federal withholding tax delivered is immediately reinvested in the collective investment scheme without deductions (taxes, commissions, etc.). **17**

## 2. General formula for calculations

$$\text{Performance \%} = \left\{ \frac{\text{NAV}_{\text{End P}} \times f_1, f_2 \dots f_n}{\text{NAV}_{\text{Start P}}} - 1 \right\} \times 100 \quad \mathbf{18}$$

NAV<sub>End P</sub> Net asset value per unit at end of observation period **19**

NAV<sub>Start P</sub> Net asset value per unit at start of observation period (i.e. the last figure for the preceding observation period)

f<sub>1</sub>, f<sub>2</sub>...f<sub>n</sub> Adjustment factors for distributions, where:

$$f = \frac{\text{NAV}_{\text{ex}} + \text{gross distribution}}{\text{NAV}_{\text{ex}}} \quad \mathbf{20}$$

NAV<sub>ex</sub> Net asset value per unit ex dividend **21**

Gross distribution Gross amount of income and capital gains distributed per unit to investors in Switzerland (for Swiss collective investment schemes with affidavit)

Cumulative performance over a number of years is calculated by geometrically linking the performance recorded in each of the years or observation periods; the annual average of cumulative overall performance over a number of years corresponds to the geometric mean. **22**

Performance must always be stated to at least one decimal place. **23**

## 3. Exceptions

In the case of collective investment schemes whose units are not issued and redeemed on a daily basis, but which are traded regularly on a regulated market open to the public (e.g. Swiss real estate funds), the performance is to be calculated in accordance with the formula specified above using the prices at which units are traded on this regulated market open to the public. If reinvestment at the lower net asset value is possible, this must be taken into account in the calculation of the adjustment factor. **24**

#### 4. Conversion into other currencies

The performance can also be calculated on the basis of net asset values that are not denominated in the accounting currency of the collective investment scheme. In such cases, there must be an explanation to the effect that the stated figure has been converted from the specified currency. The currency in which the performance is calculated must be clearly visible. Furthermore, the conversion of the net asset value at the beginning and end of the observation period must be calculated at closing exchange rates published by a recognized price publication service for the days in question. 25

### **B Publication of performance data**

#### 5. Time periods and frequency of calculation of data

Historical performance data must be published for the following observation periods at least: 26

- for the last calendar year separately, and 27  
either
  - for the last three calendar years, or 28
  - for the last five calendar years, or 29
  - since the launch of the collective investment scheme 30  
either
    - for each year separately, or 31
    - as a cumulative total figure for a number of calendar years, or 32
    - as an annual average for a number of calendar years. 33

In addition historical performance data for the current calendar year separately may be published. The performance for the current calendar year must be calculated to the end of a month no more than 60 days before the date the figure is published. It is not permissible to annualize the performance calculated for a period of less than one year. 34

In addition to figures for the previous calendar years, performance for rolling time periods to the most recent cut-off date (e.g. September to September) may be published. Only month-end figures may be used to calculate performance for rolling periods. 35

The currency in which the performance is calculated must be clearly visible. 36

## 6. Comparisons with indices

If a collective investment scheme's prospectus specifies a particular index that serves as a benchmark, only this index may be used for comparisons. If the prospectus does not specify a benchmark, an index (or another suitable reference value) may be used for purposes of comparison. This index must be specified in detail, and must reflect as far as possible the investment policy and investment character of the collective investment scheme. **37**

A benchmark/index (or reference value) must be stated in the collective investment scheme's accounting currency and for the same observation period used to calculate the collective investment scheme's performance. If the benchmark/index (or reference value) is changed during the observation period, the following rules apply **38**

- figures used previously must be kept unchanged; **39**
- data series may be linked (linked benchmark); **40**
- the date of the change must be specified; **41**
- the name of the previously used benchmark/index (or reference value) must be specified (cf. example in the appendix). **42**

If the benchmark/index (or reference value) is not a recognized or publicly accessible index for a specific investment market, the composition and the independent provider(s) must be disclosed in the annual and semi-annual reports of the collective investment scheme. In such cases, reference is to be made to this disclosure in the prospectus. Every publication of data must contain a note stating where investors can find information about the composition of the benchmark/index (or reference value). **43**

Reasons must be given if no benchmark/index (or reference value) is stated. **44**

## 7. Comparisons with peer group averages

Comparisons with peer group averages (e.g. collective investment schemes with a comparable investment policy) are permissible subject to the following requirements: **45**

- the time periods of the comparative data must match exactly; **46**
- the peer group must be a representative selection and must contain the collective investment scheme concerned as well as at least four other collective investment schemes that have a comparable investment policy (e.g. in the same category used by Swiss Fund Data AG); if there are fewer than four comparable collective investment schemes in a peer group, these may not be used for comparison purposes; **47**
- the performance of the individual collective investment schemes must be calculated in the same way; **48**
- the name or description of the peer group and the source of comparative data must be specified. **49**

## 8. Disclaimer

Each time performance data are published, mention must be made of the fact that **50**

- past performance is no indication of current or future performance, and **51**
- the performance data do not take account of the commissions and costs incurred on the issue and redemption of units. **52**

This disclaimer must be clearly visible. **53**

## 9. Inadmissible promises of performance

Promises of performance that are not guaranteed are not permitted. This does not apply to the publication of indicative minimum prices for collective investment schemes with limited price risks. **54**

## 10. Performance data for investment markets or other portfolios

To give an indication of what the performance of a new collective investment scheme would have been in the past, the performance of the investment market corresponding to the collective investment scheme's investment policy or a comparable (real or simulated) portfolio may be used. Such data may be used for a maximum of two years only. **55**

If market indices, the data of the comparable portfolio or other data are used to illustrate hypothetical past performance, they must be clearly named in properly legible print. They must be presented separately from the collective investment scheme's performance, and must not under any circumstances be linked to the latter's performance in a way that gives the impression that this information constitutes its longer-term track record. A statement must also be included to the effect that these data are purely indicative and cannot serve as the basis for conclusions concerning the future performance of the collective investment scheme. **56**

The performance of other portfolios managed by the asset manager of a collective investment scheme may be stated in the publications of the collective investment scheme for information purposes, provided that this information is in line with international standards (like GIPS). This information must also be specified clearly in properly legible print. It must be presented separately from the collective investment scheme's performance, and must not under any circumstances be linked to the latter. **57**

## 11. Repositioning (change in investment policy)

If a lasting change is made to the investment policy, thus significantly changing the investment character, this must be disclosed in a suitable manner. **58**

## 12. Restructuring / mergers of collective investment schemes

If collective investment schemes are restructured, it is permissible to continue using past performance data only if the investment policy and investment character of the collective investment scheme remain very largely unchanged. **59**

In the case of a merger, a choice must be made whether to continue the track record of the "acquiring" collective investment scheme or that of the larger "acquired" collective investment scheme. This is only permissible if the merged collective investment scheme is still managed very largely in line with the same principles and style as before the merger, and the past performance to be taken over is also representative of the new collective investment scheme. **60**

Taking over the track record is also possible in the case of a repatriation (cross-border mergers). The above prerequisites apply *mutatis mutandis*. **61**

### 13. Collective investment schemes with several unit classes

If collective investment schemes charge different costs and commissions to their assets for individual unit classes, the performance must be stated separately for each unit class. Advertising and marketing documentation must use data for the share class aimed at the audience the documentation is addressing. **62**

If collective investment schemes have currency unit classes whose reference currencies differ from the accounting currency of the collective investment scheme and/or its investment currency, the performance must at least be stated in the corresponding reference currency of the unit class. **63**

### 14. Publication of performance data in the simplified prospectus

The publication of performance data in simplified prospectuses is subject to the provisions governing such prospectuses. **64**

### 15. Additional figures

For certain individual collective investment schemes or types of collective investment scheme, additional information on yields and returns (e.g. dividend yield or return on capital) may be published. In these cases, any definitions and calculation formulae laid down by the SFA in its documentation on self-regulation will apply. **65**

If this type of information is published, it must be clearly separated from the performance data. **66**

## III Other provisions

### A Minimum standard

The supervisory authority has recognized these guidelines as a minimum standard (SFBC Circular 04/2 Self-Regulation as Minimum Standard). **67**

**B Entry into force**

These guidelines were approved by the Board of Directors of the Swiss Funds Association SFA on 16 May 2008 and enter into force on 1 July 2008. **68**

**Appendix:** Example of performance calculation and the presentation of performance data in publications **69**

## Appendix Guidelines on the calculation and publication of performance data of collective investment schemes

### A Example of performance calculation

#### 1. Scenario

2003	Net asset value at year-end (NAV Start P)	350 CU	1
2004	Distributions of income and capital gains Net asset value at year-end	8 + 10 CU; NAV <sub>ex</sub> 348 CU 357 CU	2
2005	Distribution of income Net asset value at year-end	8 CU; NAV <sub>ex</sub> 335 CU 340 CU	3
2006	Unit split Distribution of income Net asset value at year-end	1 : 5 1.50 CU; NAV <sub>ex</sub> 77 CU 79 CU	4
2007	Net asset value on 30.06.	81 CU	5

#### 2. Calculation of performance for individual years

2004:

$$\text{Performance } r_1 = \left\{ \frac{357 \text{ CU} \times 1.051724}{350 \text{ CU}} - 1 \right\} \times 100 = 7.2759\% \quad \text{or } 7.3\% \quad 6$$

Calculation of adjustment factor f  
(follow same procedure for subsequent years): 7

$$f = \frac{348 + 8 + 10 \text{ CU}}{348 \text{ CU}} = 1.051724$$

2005:

$$\text{Performance } r_2 = \left\{ \frac{340 \text{ CU} \times 1.023881}{357 \text{ CU}} - 1 \right\} \times 100 = -2.4875\% \quad \text{or } -2.5\% \quad 8$$

2006:

$$\text{Performance } r_3 = \left\{ \frac{79 \text{ CU} \times 5 \times 1.019481}{340 \text{ CU}} - 1 \right\} \times 100 = 18.4397\% \quad \text{or } 18.4\% \quad 9$$

2007 (to 30.06.):

$$\text{Performance } r_4 = \left\{ \frac{81 \text{ RE}}{79 \text{ RE}} - 1 \right\} \times 100 = 2.5316\% \quad \text{or } 2.5\% \quad 10$$



### 3. Calculation of cumulative performance for the years 2004-2006 (two alternatives)

a) using the general formula: 11

$$\text{Performance \%} = \left\{ \frac{\text{NAV}_{\text{End P}} \times f_1 \times f_2 \dots \times f_n}{\text{NAV}_{\text{Start P}}} - 1 \right\} \times 100 \quad 12$$

Calculation

$$r_{3 \text{ years}} = \left\{ \frac{79 \text{ CU} \times 1.051724 \times 1.023881 \times 5 \times 1.019481}{350 \text{ CU}} - 1 \right\} \times 100 = 23.8965\% \quad \text{or } 23.9\% \quad 13$$

b) geometrically linking performances in individual periods using the following formula: 14

$$r_{\text{cumul } n} \% = \left\{ \left( 1 + \frac{r_{P1}}{100} \right) \times \left( 1 + \frac{r_{P2}}{100} \right) \times \left( 1 + \frac{r_{Pn}}{100} \right) - 1 \right\} \times 100 \quad 15$$

$r_{\text{cumul } n}$  Cumulative performance for n periods 16

$r_{P1} \dots r_{Pn}$  Performance in individual observation periods 1...n 17

Calculation

$$r_{\text{years } 1-3} = \left\{ \left( 1 + \frac{7.2759}{100} \right) \times \left( 1 + \frac{-2.4875}{100} \right) \times \left( 1 + \frac{18.4397}{100} \right) - 1 \right\} \times 100 = \quad 18$$

$$\{1.072759 \times 0.975125 \times 1.184397 - 1\} \times 100 = 23.8967\% \quad \text{or } 23.9\%$$

### 4. Calculation of the average annual performance

General formula: 19

$$\text{Average performance p.a. \%} = \left\{ \sqrt[n]{1 + \frac{r_{\text{cumul } n}}{100}} - 1 \right\} \times 100 \quad 20$$

Calculation

$$\text{Average performance p.a. \%} = \left\{ \sqrt[3]{1 + \frac{23.8966}{100}} - 1 \right\} \times 100 = 7.4038\% \quad \text{or } 7.4\% \quad 21$$

## B Example of how to present performance data in publications

### 1. 2007 and 2006 and for each subsequent calendar year individually

XYZ Fund - Performance				
Calculated in CU	2007 01.01. - 30.06.	2006	2005	2004
XYZ Fund	2.5%	18.4%	– 2.5%	7.3%
Benchmark index	2.6%	18.9%	– 2.9%*	7.1%

22

\* to 30.06.2005 index ... (name of benchmark index used previously)

### 2. 2007 and 2006 and the annual average for the last three and five years

XYZ Fund - Performance				
Calculated in CU	2007 01.01. - 30.06.	2006	2004 – 2006 average p.a.	2002 – 2006 average p.a.
XYZ Fund	2.5%	18.4%	7.4% p.a.	10.6%*
Benchmark index		18.9%	7.3%*	9.9%

23

\* to 30.06.2005 index ... (name of benchmark index used previously)

Past performance is no indication of current or future performance. These performance data do not take account of the commissions and costs incurred on the issue and redemption of units.

24

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## Guidelines on the Distribution of Collective Investment Schemes

29 May 2008

### I Basic principles, aims and binding force

- The following guidelines are aimed at ensuring high quality standards on the Swiss market for collective investment schemes with regard to the information and advice provided to investors. They supplement and define in more detail the provisions on the distribution of collective investment schemes set down in the Code of Conduct for the Swiss Fund Industry. 1
- The guidelines are part of the self-regulation regime of the Swiss fund industry. The Code of Conduct for the Swiss Fund Industry issued by the SFA takes precedence. 2
- These guidelines apply in respect of collective investment schemes, including their subfunds and classes, that are not exclusively aimed at qualified investors pursuant to Art. 10 CISA and are distributed publicly in Switzerland. They apply to 3
- Swiss fund management companies pursuant to Art. 28 et seq. CISA, 4
  - investment companies with variable capital (SICAVs) pursuant to Art. 36 et seq. CISA, 5
  - investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seq. CISA, and 6
  - representatives of foreign collective investment schemes pursuant to Art. 123 CISA, 7
- referred to below as "Providers". 8
- The *Provisions for Distributors* contained in the annex to these guidelines are an integral part of the distribution agreements of Providers with Distributors in Switzerland. The latter must comply with the *Provisions for Distributors* at all times. 9
- For the purposes of the present guidelines, the term "Distributor" includes both persons who publicly offer or distribute units of a collective investment scheme and therefore require authorization as a distributor (distributors requiring authorization pursuant to Art. 19.1 CISA) and institutions exempt from the duty to obtain authorization pursuant to Art. 19.4 CISA. The *Provisions for Distributors* are also to be complied with by Providers if they themselves are directly active in the distribution of collective investment schemes. 10
- The *Provisions for Distributors* apply to agents of an insurance company if they are not de jure and de facto integrated in the organization of the insurance institution on the basis of an agency agreement. 11

## II Guidelines

### A Selection of and collaboration with Distributors

#### Basic principle

1. As regards the distribution of the collective investment schemes they manage or represent, Providers must work exclusively with Distributors that can ensure proper business activities. **12**
2. With the exception of the conclusion of distribution agreements, Providers may delegate tasks arising from these guidelines to third parties (e.g. monitoring of Distributors, training). **13**

#### Selecting Distributors

3. Providers must select Distributors diligently in accordance with the principle set down under point 1. **14**
4. They work together with Distributors exempt from the duty to obtain authorization (Art. 19.4 CISA) and/or Distributors requiring authorization (Art. 19.1 CISA). The latter must have submitted at least the following documents to the Provider: **15**
  - authorization as a Distributor from the supervisory authority; **16**
  - information on its organization in respect of the distribution of collective investment schemes. **17**

#### Concluding distribution agreements

5. Providers must conclude distribution agreements exclusively on the basis of the currently valid version of the model distribution agreement issued by the SFA. The *Provisions for Distributors* contained in the appendix to these guidelines are an integral part of the distribution agreement. **18**
6. In concluding the distribution agreement, the Provider must oblige the Distributor to comply with the *Provisions for Distributors* contained in the appendix to these guidelines at all times and to have such compliance checked by an auditor. **19**

#### Working together with Distributors

7. Providers must where required ensure appropriate support, instruction and training to enable the Distributors to comply with the *Provisions for Distributors* at all times. **20**
8. Providers must take appropriate steps to allow them to determine any significant changes in the Distributor's legal form, structure (especially where other agents are used), staffing, business activity and/or business conduct. **21**

Monitoring obligations

- |     |   |           |
|-----|---|-----------|
| 9.  | Providers must monitor the timely receipt of the audit reports on the compliance with the <i>Provisions for Distributors</i> pursuant to point 6 and systematically evaluate said reports.  | <b>22</b> |
| 10. | Where any violations against the <i>Provisions for Distributors</i> are identified, the Provider will require the Distributor to take immediate corrective measures and to report on the completion of such measures. Any agents must inform the Providers in this regard. In the case of repeated or gross violations, the distribution agreement must be terminated and the supervisory authority informed. | <b>23</b> |

**B Internal directive**

Providers must issue an internal directive setting down their policy and guiding principles with regard to the selection and ongoing support/monitoring of Distributors. This directive will cover aspects including:	<b>24</b>
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|--|-----------|
| • the selection criteria and process;  | <b>25</b> |
| • responsibilities for concluding distribution agreements and for the ongoing support/monitoring of the Distributor (measures to identify significant changes and unusual business conduct); | <b>26</b> |
| • procedure to be adopted when changes or unusual business conduct on the part of the Distributor are identified or where the <i>Provisions for Distributors</i> are violated.               | <b>27</b> |

**III Other provisions****A Minimum standard**

The Swiss Federal Banking Commission has recognized these guidelines as a minimum standard (SFBC Circular 04/2 Self-Regulation as Minimum Standard).	<b>28</b>
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**B Entry into force and transitional provisions**

The present guidelines were issued by the SFA Board of Directors on 29 May 2008. They enter into force on 1 July 2008.	<b>29</b>
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Existing distribution agreements must be amended by 30 June 2009 at the latest.	<b>30</b>
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**C Appendix**

<i>Provisions for Distributors</i>	<b>31</b>
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## Appendix: Provisions for Distributors

### I Objectives

The following provisions are aimed at ensuring that with regard to the distribution of collective investment schemes in Switzerland, investors receive sufficient information and advice. Clients who buy collective investment schemes that have been approved in Switzerland should be able to rely on these being offered in a professional and transparent manner. **1**

### II Scope and validity

These provisions form an integral part of the distribution agreements of Providers with Distributors in Switzerland. **2**

These provisions relate solely to activities in the distribution of collective investment schemes. They do not govern the Distributor's other activities and contain no provisions on other functions, such as the administrative settlement of transactions or obligations in connection with the Anti-Money Laundering Act. **3**

### III Provisions

#### A Organization of the Distributor

1. The Distributor must take the necessary organizational steps to ensure that it complies with these provisions at all times. It may appoint sub-distributors only with the approval of the Provider. The sub-distributors must be authorized to act as distributors by the supervisory authority pursuant to Art. 19.1 CISA or must be exempt from the requirement to obtain such authorization by law (Art. 19.4 CISA). The Distributor must impose on any sub-distributors the obligation to observe the present provisions and must monitor their compliance with the said. **4**
2. For the provision of client advice relating to collective investment schemes, the Distributor must employ only persons who have the necessary professional training and experience to satisfy the principles of these provisions. **5**

#### B Duty of disclosure

3. The Distributor acts exclusively in the interests of the investors. **6**
4. If the Distributor distributes collective investment schemes in direct contact with the clients, the following principles are to be observed: **7**
  - 4.1 The Distributor must take the investor's individual requirements into account, in particular their risk tolerance and risk capacity. **8**



- 4.2 The Distributor must give investors objective information / advice on the investment character, opportunities and risks of the collective investment schemes being offered. In observing this duty, the experience and specialist knowledge of the investor and the complexity of the collective investment scheme in question are to be taken into account. The Distributor may assume that investors are acquainted with the basic risks of investing in money market instruments, bonds, equities and foreign currencies. Furthermore, the Distributor must inform the investor about the costs of the collective investment scheme offered. In addition to this, the Distributor must comply with the contractual, statutory and self-regulatory duties to which it is subject. **9**
- Point 4 does not apply to banks and securities dealers that apply the "Guidelines on portfolio management agreements" or the "Code of conduct for securities traders". **10**
5. If the Distributor distributes collective investment schemes via electronic channels or in another form without direct client contact, the following principles are to be observed: **11**
- 5.1 The Distributor must make explicit reference to the fact that it does not provide advice. **12**
- 5.2 The Distributor must observe its duty of disclosure pursuant to point 4 mutatis mutandis. In doing so, it may supply information in standardized formats. **13**
- 5.3 The Distributor is not subject to any duty of disclosure in respect of investors who issue a written declaration stating that they waive their right to receive additional information. **14**
- Point 5 does not apply to banks and securities dealers that apply the "Guidelines on portfolio management agreements" or the "Code of conduct for securities traders". **15**
6. If an investor issues a subscription order for units in collective investment schemes on their own initiative or if they themselves demand information on certain collective investment schemes, the provisions of this Section B do not apply. The contact initiated by the investor is to be documented. **16**
7. On Internet pages containing information on collective investment schemes, the Distributor is obliged to provide a clear reference to key legal aspects (disclaimers) relating to the distribution activities as well as the information pursuant to Art. 133.2 CISO. If it provides links to Providers or other distributors, the Distributor may not bypass their disclaimers other than with a direct link to the corresponding prospectus or simplified prospectus. **17**
8. The Distributor must make the documents supplied to it by the Provider available to interested investors free of charge. This applies specifically to prospectuses, simplified prospectuses, articles of association, fund contracts, investment regulations, annual reports and semi-annual reports of the collective investment schemes offered. **18**
9. The information and documentation provided by the Distributor must be complete, and must be structured – both in written and spoken form – in such a way that they are clear and comprehensible for investors at all times. In particular, it is not permitted to give misleading information or promises with regard to returns (this does not apply in the case of information on the indicative minimum price for collective investment schemes with limited downside risks). When using historical performance data, **19**

it must be pointed out that these cannot be guaranteed in the future. If the Distributor makes any material statements on individual collective investment schemes, it must in principle adhere to the information contained in the documentation supplied by the Provider.

- |     |  |           |
|-----|--|-----------|
| 10. | The Distributor must refrain from all kinds of aggressive sales techniques, such as unsolicited contacting of potential clients by telephone (cold calling) or via electronic media (spamming).  | <b>20</b> |
| 11. | Recommendations made primarily in the Distributor's own interests and at the expense of the investors are not permitted. This applies in particular to any practice that causes investors to make a disproportionately high number of switches in their portfolio (portfolio churning).  | <b>21</b> |
| 12. | The Distributor must refrain from any form of front running. Front running refers to proprietary transactions concluded by the Distributor or its employees in anticipation of securities transactions in a collective investment scheme (e.g. as a result of significant subscriptions or redemptions of units by investors). | <b>22</b> |

## **C Documentation of the Distributor**

- |     |   |           |
|-----|---|-----------|
| 13. | The Distributor must issue written regulations or documentation governing the following:  | <b>23</b> |
|     | • the organizational measures implemented pursuant to point 1;  | <b>24</b> |
|     | • the requirements in respect of specialist training and professional experience and the instruction and training measures pursuant to point 2; | <b>25</b> |
|     | • the advice and explanation of risks pursuant to point 4 (e.g. in notes taken of discussions);   | <b>26</b> |
|     | • waiver of disclosure of information pursuant to point 5.3 (e.g. in a note);   | <b>27</b> |
|     | • the contact initiated by the investor pursuant to point 6.  | <b>28</b> |

## **IV Other provisions**

### **A Audits**

Irrespective of its legal form, the Distributor must have its compliance with these provisions checked by an auditor. It must inform the Provider of the auditor it appoints. **29**

The specific aspects of the audit are covered in detail in the appendix. **30**

### **B Entry into force**

The present provisions were issued by the SFA Board of Directors on 29 May 2008. They enter into force on 1 July 2008. **31**

The Swiss Federal Banking Commission has acknowledged and accepted the present provisions as an annex to the Guidelines on the Distribution of Collective Investment Schemes. **32**

## **C     Appendix**

*Audits* **33**

## Appendix: Audits

### A Audits in the case of Distributors exempt from the duty to obtain authorization (Art. 19.4 CISA)

As part of the regulatory audit, the auditor checks compliance with the *Provisions for Distributors* on the basis of the parameters set by the supervisory authorities in the pertinent circulars on risk-based audits. 1

As part of a multi-year audit cycle, the auditor must ensure that compliance with the *Provisions for Distributors* is regularly audited. 2

It must set the audit findings down in the report on the regulatory audit. If it discovers any violations that would lead to a reservation in the report on the regulatory audit, it must inform the Provider concerned in writing. 3

### B Audits in the case of Distributors subject to the duty to obtain authorization (Art. 19.1 CISA)

The following are permitted to conduct audits in respect of the *Provisions for Distributors*: 4

- Audit experts pursuant to Art. 4 of the Audit Supervision Act of 16 December 2005 (ASA); 5
- Auditors pursuant to Art. 5 ASA; 6
- Audit firms pursuant to Art. 6.1 ASA. 7

The Distributor must inform the Provider of the person mandated to conduct the audit and of any change in this regard. 8

The audit of compliance with the *Provisions for Distributors* must be conducted annually. 9

The person mandated to carry out the audit must deliver the audit report to the Provider concerned. If they find in their report that there have been violations of the *Provisions for Distributors*, they must also send a copy of their audit report to the supervisory authority. 10

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## Guidelines for Real Estate Funds

2 April 2008

### I Basic principles, aims and binding force

The following guidelines provide detailed information in respect of specific matters pertaining to the duties of loyalty, due diligence and disclosure of real estate fund management companies and real estate SICAVs as well as representatives of foreign real estate funds, the objective being to ensure the high quality of real estate funds in Switzerland. The guidelines contain basic principles on uniform valuation and information for investors. By establishing standards, the guidelines are also aimed at ensuring the greatest possible transparency in the offering of these products. 1

The guidelines are part of the self-regulation regime of the Swiss fund industry. They are based on Section II paragraph 2 of the Code of Conduct for the Swiss Fund Industry, which applies to all fund management companies and SICAVs as well as representatives of foreign collective investment schemes (referred to below as the "Code of Conduct"). 2

The guidelines apply to 3

- Swiss fund management companies of real estate funds and real estate SICAVs (pursuant to Art. 58 et seq. CISA); 4
- representatives of foreign real estate funds (pursuant to Art. 119 et seq. CISA) in respect of Sections D and E of the present guidelines. 5

Exceptions approved by the supervisory authority for real estate funds reserved exclusively for qualified investors pursuant to Art. 10.3 and Art. 10.4 CISA apply notwithstanding. 6

### II Guidelines

#### A Duty of the fund management company/SICAV in respect of due diligence

##### 1. Ensuring a proper organizational structure

The fund management company/SICAV must implement the necessary organizational measures pursuant to the Code of Conduct (including an internal control system) to enable it to manage its real estate fund business in a proper manner. At the least, it must observe adequate separation of functions with regard to the following activities: 7

- decision-making (in particular in respect of acquisitions, sales and the maintenance of properties) and 8
- controlling (e.g. of valuations, execution of delegated tasks and the real estate companies). 9

It will delegate executive functions in respect of the management of real estate funds exclusively to persons with many years of suitable experience in the real estate business and – depending on the task – also in the collective investment business. **10**

## 2. Real estate companies belonging to real estate funds

The fund management company/SICAV must ensure that the same basic principles and standards apply to real estate companies belonging to the real estate fund as apply to the fund management company/SICAV. In particular, with regard to the structure of the Board of Directors and the Executive Board, the same requirements must apply as for the governing and executive bodies of the fund management company/SICAV. **11**

## 3. Delegation of tasks (Art. 31.1 CISA):

Where tasks are delegated pursuant to Art. 31.1 CISA, the fund management company/SICAV must conclude an agreement with the agent(s) with specific regulations governing the delegated task, the performance of that task while avoiding potential conflicts of interest, areas of responsibility, powers of authority, scope of liability and fees. Barring any provisions to the contrary in the fund regulations, the agents' fees are borne by the fund management company or the shareholder's assets in the case of a SICAV. **12**

The fund management company/SICAV must ensure that the agents are aware of the provisions of the present guidelines and other pertinent guidelines, and it must ensure that the agents are contractually obliged to comply in full with such provisions. **13**

## 4. Relationship with the custodian bank

The fund management company/SICAV must conclude an agreement with the custodian bank governing the parties' respective areas of responsibility, settlement procedures and interfaces. **14**

## 5. Relationship with the independent valuation experts

For each real estate fund, the fund management company/SICAV must appoint at least two natural persons or one legal entity familiar with the pertinent real estate markets as valuation experts. **15**

The fund management company/SICAV will only appoint valuation experts that meet the requirements laid down in the law and the regulations with regard to independence, training, experience and knowledge of the market. **16**

The details in respect of the cooperation, specifically with regard to settlement procedures, areas of responsibility and fees, are to be covered in an agreement. **17**

While safeguarding the independence of the valuation experts, the agreement must also stipulate the valuation method that the valuation experts will as a rule use in conducting their valuations. **18**



## **B Principles for determining the market value of the properties and other investments**

### **6. Market value**

The market value of a property corresponds to the price that would probably be obtained in a diligent sale at the time of valuation. **19**

### **7. Determining the market value**

The market value of the properties is to be determined using a discounted income value approach. The market value is to be determined on the basis of the result of the valuation method applied, taking due consideration of the market environment. **20**

Subject to the exceptions listed below, all properties of a real estate fund must be valued using the same discounted income value approach (standard valuation method). **21**

In the case of those properties that can only be valued using a different valuation method (e.g. undeveloped building land or properties for demolition), the valuation report must give the reasons for selecting the different valuation method and a description of the method in question (cf. Section 16). **22**

### **8. Discounted income value approaches**

The cash value method, the discounted cash flow (DCF) method and other recognized discounted income value methods are recognized as discounted income value approaches. **23**

### **9. Individual (property-specific) valuation**

In every case, the income value of a property requires an individual valuation. Such valuations must take into account all of the factors that experience shows to have an impact on the selling price at the time of the valuation, such as specifically the market environment and the quality of the property concerned. **24**

### **10. Market environment**

The current and expected market environments are decisive factors. The market environment is determined by all of the significant circumstances influencing supply and demand in the regular conduct of commercial activity at the time of the valuation, such as specifically the prevailing economic situation, the capital market and developments, which are to be taken in the context of their impact on the specific property. In this regard, unusual or speculative scenarios may only be taken into account if they are of a lasting nature and their impact on the valuation can be quantified. **25**

The market environment that could result if all of the properties of one or all real estate funds were to be offered on the market at the same time is not to be taken into account. **26**

## 11. Quality

The quality of a property is determined in particular by the characteristics of the location, the size and design of the property, utility, rights or liabilities under private or public law, interior works, construction materials, age, condition, rental status, rental potential, rental income, rental income reserves, etc. **27**

Characteristics of a property's location include in particular transport links, neighborhood, attractiveness as a place of residence/business, and environmental factors. **28**

## 12. Conducting the valuations

The fund management company/SICAV must compile all the relevant documents for the valuation of the property that the valuation experts will need for their valuation activities, and must provide these documents to the valuation experts. **29**

In respect of reviewing the market values pursuant to Art. 93 and Art. 97.3 CISO, the fund management company/SICAV must deliver all the necessary data that have changed since the last valuation. It is responsible for controlling and verifying the valuation results. **30**

## 13. Valuation report

The fund management company/SICAV must ensure that each valuation is documented in a valuation report in such a manner that it can be readily understood by a professional. Each valuation report must be signed by the valuation expert in question. **31**

Reasons must be given for the amounts of the discount rates and other parameters used in the DCF valuation practice, as well as any changes compared with the previous year, and these must be verified. **32**

## 14. Changing the valuation method

If the fund management company/SICAV changes the valuation method, the valuation experts must inspect all the properties. **33**

The investors must be notified in advance of the change in the valuation method, with reference to the fact that this may result in a higher or a lower valuation. The supervisory authority must also be informed in advance. **34**

## 15. Valuation of other investments

The fund management company/SICAV must value securities, liquid assets and other investments in accordance with the SFA Guidelines on the Valuation of the Assets of Collective Investment Schemes and the Handling of Valuation Errors in the case of Open-End Collective Investment Schemes. **35**

## 16. Internal directive on valuation and the calculation of the net asset value

The fund management company/SICAV must set down in an internal directive the basic **36**

principles, processes and responsibilities applicable in respect of the valuation of the fund's assets. This directive must at least cover the following:

- the description of the valuation method used as standard; 37
- the description of cases in which methods other than the standard valuation method are used together with a description of the methods (cf. Section 7); 38
- the interfaces, processes and responsibilities in respect of the valuation experts; 39
- measures to verify the valuation figures provided by the valuation experts, and procedure to be followed if the fund management company/SICAV does not intend to use these figures; 40
- responsibility for verifying the determined net asset value within the fund management company/SICAV; 41
- the internal flow of information (avoidance of conflicts of interest). 42

#### 17. Issuing units (Art. 66 CISA in conjunction with Art. 97 CISO)

In issuing units, the fund management company/SICAV must take into account the pertinent specialist information factsheet of the SFA. 43

### **C Duty of the fund management company/SICAV in respect of loyalty**

#### ***Avoidance of conflicts of interest***

#### 18. Transactions with closely connected persons/entities

Among others, closely connected persons and entities are defined as follows (including their life partners, and the companies of the closely connected persons and their life partners): 44

- significant equity holders pursuant to Art. 14.3 CISA; 45
- the members of the Board of Directors and the employees of the fund management company/SICAV; 46
- the custodian bank employees tasked with monitoring the real estate funds; 47
- the audit firm and its employees tasked with auditing the real estate funds; 48
- the valuation experts; 49
- the members of the Board of Directors and the members of the Executive Board of the real estate companies belonging to the real estate fund; 50
- the property management companies tasked with managing the fund's properties and their employees. 51

The fund management company/SICAV will buy/sell real estate assets for the account of the real estate fund only from/to persons/entities who confirm with their signature that they are not closely connected persons/entities pursuant to para. 1. **52**

The fund management company/SICAV will conclude rental contracts with closely connected persons/entities at standard market terms. It will have this confirmed annually by the valuation expert responsible. **53**

The fund management company/SICAV will also conduct all other dealings with closely connected persons/entities at standard market terms (at arm's length). **54**

19. Transactions between real estate funds

If a fund management company/SICAV manages several real estate funds, in all transactions between these real estate funds it must be ensured that the real estate funds involved are treated equally and that none is given preferential treatment to the detriment of the others. **55**

20. Personal account dealing by employees

The fund management company/SICAV will issue suitable regulations pursuant to the Code of Conduct governing personal account dealing by its employees in units of the real estate fund. **56**

***Investment of fund assets***

21. Basic principle

The fund management company/SICAV manages the real estate funds it establishes in accordance with the investment policy and requirements defined for the individual real estate funds. It will not give certain real estate funds and/or investor groups preferential treatment to the detriment of others (e.g. when allocating newly acquired properties). **57**

22. Maintenance and renovations

The fund management company/SICAV must ensure that the properties are properly and regularly maintained. It will award contracts independently and only to carefully selected counterparties that offer the best execution overall in terms of price, time and quality. It will use commissions, discounts and reimbursements received exclusively for the benefit of the real estate fund. If more than one real estate fund is involved, they will benefit on a pro rata basis. **58**

23. Joint construction projects

If the fund management company/SICAV realizes a construction project for the account of the real estate fund jointly with the custodian bank or a closely connected person/entity, it must ensure that any ensuing benefits (e.g. favorable terms in the case of a major contract) accrue to the real estate fund in proportion to its stake in the project. **59**

#### 24. Commissions from real estate transactions

Any commissions accruing to the fund management company/SICAV for brokering the services of closely connected persons/entities in connection with real estate transactions will be credited against the remuneration due to it in accordance with the fund regulations. **60**

#### 25. Other investments

If the fund management company/SICAV takes up a loan from the custodian bank for the account of the real estate fund or if it invests liquid assets with the custodian bank, it must make regular comparisons with competitors to ensure that the interest rate is in line with the standard market conditions. **61**

### **D Duty of the fund management company/SICAV in respect of the disclosure of information**

#### 26. Investment character and suitability of the real estate fund

In the sales documentation, the fund management company/SICAV must explain the investment character and suitability of the fund as well as the characteristics of free trading in the fund's units (premium/discount) in a form and language readily accessible to investors (i.e. reader-friendly). It must refrain from making statements on the future performance of the real estate fund. Sales documentation is deemed as being issuing prospectuses and marketing documents that provide detailed information on the fund as promotional material. **62**

However, the fund management company/SICAV may assume that the investor is familiar with the basic fundamentals of investing in real estate. The duty of disclosure thus refers above all to the specific characteristics and risks of the real estate fund, such as for example **63**

- the dependence of earnings on (regional) economic developments; **64**
- key regional factors. **65**

In the annual and semi-annual reports, the fund management company/SICAV must disclose any tenants that account for more than 5% of the total rental income of the real estate fund on the pertinent reference date. If no tenant reaches this 5% threshold, it must disclose this fact. **66**

#### 27. Disclosure of the valuation method

In the annual and semi-annual reports, the fund management company/SICAV must provide information on the method used to value the properties. It must disclose in the annual report the average discount factor applied and must explain the key characteristics of the method selected. **67**

In the event of a change in the valuation method, the duty of disclosure is as covered in Section 14. **68**

## 28. Standardized key data

The fund management company/SICAV must publish at least the following key data in the annual and semi-annual reports: **69**

• Rent default rate	• Dividend yield	<b>70</b>
• Borrowing ratio	• Payout ratio	<b>71</b>
• Operating profit margin (EBIT margin)	• Premium / discount	<b>72</b>
• Fund operating expense ratio (TER <sub>REF</sub> )	• Performance	<b>73</b>
• Return on equity (ROE)	• Investment return	<b>74</b>

In addition to these, the fund management company/SICAV is free to publish the following key data, among others: **75**

• Net return on completed buildings	• Price/earnings ratio (P/E)	<b>76</b>
• Average age of completed buildings	• Price/cash flow ratio	<b>77</b>
• Gearing	• Market capitalization	<b>78</b>
• Return on invested capital (ROIC)		<b>79</b>

The above terms may only be used for key data that correspond exactly to the definitions listed in the SFA specialist information factsheet "Key Data for Real Estate Funds" and that are also calculated in accordance with the said factsheet. It is not permitted to use these terms for other key data or key data calculated in a different manner. **80**

To ensure the continuity of information for investors, the fund management company/SICAV will publish the same key data in other publications (e.g. factsheets, quarterly reports). In so doing it may restrict itself to the most important key data, but once these have been selected they must be maintained over a prolonged period. **81**

## 29. Announcing price-sensitive changes

The fund management company/SICAV must openly inform investors about changes that could have a significant influence on the pricing of units on the free market. It must take the necessary precautions to prevent insider trading. **82**

The fund management company/SICAV must ensure that price-sensitive information is only passed on to the custodian bank's trading units if it is also published for the attention of investors at the same time. **83**

For the purposes of the present section, price-sensitive changes are deemed to include the following: **84**

- changes of more than 5% in the net asset value of units compared with the most recently published figure; **85**
- unexpected events having a significant impact on the income statement (e.g. in the **86**

case of an important tenant defaulting or the need for major, unscheduled refurbishment);

- decisions by the responsible bodies to restructure, merge or liquidate the real estate fund; **87**
- notice having been served on units corresponding to more than 20% of the net fund assets. **88**

In the case of listed real estate funds, the fund management company/SICAV must comply with the regulations of the SWX on the disclosure of price-sensitive facts (ad hoc publicity pursuant to Art. 72 of the Listing Rules) and on the suspension of trading. **89**

In the case of unlisted real estate funds, the fund management company/SICAV will disclose in the prospectus the procedure for notifying investors of price-sensitive changes. **90**

## **E Duties of due diligence and loyalty in the distribution of collective investment schemes**

### 30. Application of the SFA Guidelines on the Distribution of Collective Investment Schemes

If the fund management company/SICAV distributes the real estate funds it manages via distributors, it must apply the provisions of the SFA Guidelines on the Distribution of Collective Investment Schemes. **91**

## **III Other provisions**

### **A Minimum standard**

The Swiss Federal Banking Commission has recognized these guidelines as a minimum standard (SFBC Circular 04/2 Self-Regulation as Minimum Standard). **92**

### **B Entry into force**

The present guidelines were approved by the SFA Board of Directors on 2 April 2008. They enter into force on 1 July 2008. **93**

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