

Guidelines on Duties Regarding the Charging and Use of Fees and Costs (Transparency Guidelines)

22 May 2014

I Objectives and scope

The objective of these Guidelines is to provide more specific detail on the duty to provide information set down in Art. 20 para. 1 let. c CISA. They are aimed at ensuring that, according to their own needs, investors are able to gain a picture of the fees and costs charged to a fund's assets, and the use made of those fees and costs. The Guidelines are also designed to contribute to the relative equal treatment of the investors invested in a fund, ruling out the cross-subsidization of certain privileged investors by non-privileged investors. **1**

In the absence of any provisions to the contrary, these Guidelines apply to all licensees as defined in Art. 13 CISA and their agents. They also apply to foreign funds distributed in Switzerland, their representatives, and the persons who distribute these funds in Switzerland. If foreign law provides for stricter rules regarding distribution in Switzerland and these rules are set down in the pertinent fund documents, it must be ensured that Swiss investors also benefit from them. The relevant rules must be explicitly and exhaustively listed in the appendix to the sales prospectus. The provisions of these Guidelines apply to all persons and funds only with regard to the relevant activities in Switzerland or from Switzerland. **2**

These Guidelines are restricted to the applicable provisions of the CISA and CISO. They have no influence on the relationships under private law between a licensee / its agents and the investors, and they should in no way limit or influence the freedom of contract between the parties. **3**

The scope of the present Guidelines is limited to the fund business. Hence they do not, for example, cover the asset management business for non-fund investors (individual asset management) of a Swiss fund management company. **4**

II Guidelines

A Duty to provide information with regard to the charging of fees and costs

1. Setting fees and costs and definition of terms

In principle, the licensees set the type and amount of the fees, and negotiate the costs which are to be charged accordance with the fund regulations. This relates specifically to: **5**

- the fees set down in Art. 37 para. 1 let. a to d CISO; **6**
- the incidental costs set down in Art. 37 para. 2 CISO; and
- commissions and fees incurred in connection with the issue and redemption of units (Art. 38 CISO).

Licensees have the right to designate fees and costs individually or to aggregate them under one or more terms (e.g. “all-in fee” or “flat fee”). In the latter case, the licensee must take into account the provisions of Art. 37 para. 4 CISO. **7**

A fund management company / SICAV may structure a Swiss fund to have various unit classes with different fee rates (including unit classes with a management fee of 0%). In such cases, the conditions for participating in a given class must be defined on the basis of objective criteria (e.g. a unit class for qualified investors or a unit class with a minimum investment volume) and this must be disclosed transparently in the fund documents. **8**

2. General duty to provide information

In principle, licensees must disclose the information regarding the charging and use of fees and costs, in accordance with Art. 20 para. 1 let. c CISA, transparently in the fund documents (e.g. fund contract, investment regulations, prospectus or annual report). **9**

In the absence of any further-reaching provisions under B below, the following information is to be disclosed in the fund documents¹ in respect of the charging of fees and costs: **10**

- the fees and costs the licensee or its agents may charge to the fund; **11**
- the level of such fees; bands or maximum rates may also be specified (in such cases, the actual fees charged must be disclosed in the annual report);
- the level of the fees and incidental costs in the last reporting period. The scope set down in Art. 67 CISO-FINMA is sufficient for the disclosure.

The following information is to be disclosed in the fund documents in respect of the use of fees and costs: **12**

- whether the fees may be paid to third parties for the provision of services in connection with the performance of the fund business, without the identity of the third party or the amounts paid to them having to be disclosed (e.g. the identity of the distributor or the amount of the retrocessions paid to them, or the identity of the sub-custodian and the sub-custody fees paid to them); as well as **13**
- the services concerned.

3. Investor-specific duty to provide information

In addition to the general information, the licensees and their agents are obliged to answer justified enquiries from investors free of charge, provided the following conditions are met: **14**

- Existing investors are entitled to receive information, as are former investors²; **15**
- The parties to the fund contract (as a rule the fund management company and custodian bank) or the SICAV / SICAF are obliged to disclose information in accordance with the information available to them, as are their agents who have a direct contractual relationship with the investors, in respect of the fees they receive;
- The investor must assert their justified interest; in particular, the duty to provide information is restricted to their specific investment and the period in which they were invested, taking into account the legal regulations on limitation periods and the reasonableness of their information request.

¹ For Swiss funds, this is essentially the fund contract (Art. 35a para. 1 let. j CISO, Art. 37 para. 3 CISO, and Art. 38 para. 2 CISO).

² With regard to the period during which they were invested.

B Duties in connection with the use of fees and costs (retrocessions and rebates)

1. Retrocessions

For the purposes of these Guidelines, retrocessions are deemed to be payments and other soft commissions paid by fund management companies, SICAVs and SICAFs and their agents for distribution activities in respect of fund units. **16**

Retrocessions are normally paid from the management fee and/or the distribution fee, and on the basis of a written contract. **17**

The granting of retrocessions is permitted, irrespective of the contractual relationship between the recipient of the retrocession and the investor (asset management agreement, advisory agreement, execution only) and irrespective of whether the service qualifies as distribution or is not deemed to be distribution pursuant to Art. 3 CISA. **18**

Art. 34 para. 2^{bis} CISO in conjunction with Art. 21 para. 1 CISA provides for a duty to provide information with regard to compensation for distribution. This duty to provide information is to be met by the licensees concerned that pay the retrocessions, by means of transparent disclosure of those retrocessions. They must state in the fund documents that retrocessions are paid, and for which services, without having to name the service providers. **19**

The recipients of the retrocessions must ensure transparent disclosure. They must inform investors, unsolicited and free of charge, about the amount of the compensation they may receive for distribution, for example by giving the calculation parameters or compensation bands. On request, they must disclose the amounts they actually receive for the distribution of the collective investment schemes held by the investors concerned. **20**

The receipt of retrocessions for distribution activities may give rise to conflicts of interest, for example if the recipients have already been compensated for their service. In such cases, the existence of the conflicts of interest and their nature are to be disclosed to the investors by the recipient of the retrocessions in a suitable and sufficiently specific form. **21**

In addition to the above provisions, licensees and their agents must comply with all provisions applicable to them under civil law and the relevant provisions of the currently valid FINMA Circular "Guidelines on asset management" in respect of disclosure and, where applicable, waivers. **22**

2. Rebates

For the purposes of the present Guidelines, rebates are defined as payments by fund management companies, SICAVs, SICAFs and their agents directly to investors from a fee or cost charged to the fund with the purpose of reducing the said fee or cost to a contractually agreed amount. **23**

Rebates are permitted provided that **24**

- the aforementioned financial intermediaries pay them from the fees due to them (so that they are not charged additionally to the fund assets); **25**

- they are granted on the basis of objective criteria (see below);
- all investors (irrespective of whether they are qualified investors or not), who qualify on the basis of these objective criteria and demand rebates are also granted these within the same timeframe and to the same extent; and
- they are disclosed transparently in the fund documents³ (see below).

Examples of objective criteria include the investment volume of a fund or the product range of a promoter of collective investment schemes, the amount of the fees generated by the investors, the expected investment period, and the willingness of the investor to provide support in the launch phase of a fund. **26**

The fund documents must disclose whether investors may be granted rebates on the fees or costs, and if so subject to which conditions (objective criteria). **27**

At the request of the investor, the aforementioned financial intermediaries must disclose free of charge the objective criteria for granting rebates, and the corresponding amounts. The names of the persons who already receive rebates need not be disclosed (business confidentiality). **28**

III Other provisions

A Minimum standard

The supervisory authority has recognized these Guidelines as a minimum standard (FINMA Circular 2008/10 “Self-Regulation as a Minimum Standard”). **29**

B Entry into force

The present Guidelines were approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 22 May 2014. They enter into force on 1 July 2014. **30**

Fund management companies and SICAVs must submit fund contracts, investment regulations or sales prospectuses amended in line with these Guidelines to the supervisory authority for approval by no later than 1 March 2015. Representatives of foreign funds must submit fund contracts, investment regulations or sales prospectuses amended in line with these Guidelines to the supervisory authority for approval by no later than 1 June 2015. With respect to the granting of rebates (see margin number 23 et seqq.), compliance with the respective provisions is only required once the corresponding amendments have been made to the fund contract, investment regulations or sales prospectus. **31**

³ For Swiss funds, this is the prospectus (Annex 1 point 1.12 CISO).

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