

Federal Financial Services Act : the train has left the station, ARIF joined it on your behalf on 15 August 2012!

On 18 February 2013, the steering group drafting the «Federal Financial Services Act» (FFSA) published a report intended for the hearing, which indicates the main features of the planned draft regulation, and by the same token completes the first stage of the project. The deadline and objective of the next stage are already known : the communities consulted have until 28 March to send in their position in writing. In the stage after that, the bill will go out for consultation, and that is scheduled for October 2013 !

The bill, which was announced during the summer of 2012 and follows on from a series of FINMA reports on product distribution, will seek to bring Swiss legislation relating to financial products - and therefore investment and wealth management advice - into line with the international and European standards by 2015. At that point it will be important for the main players in our country for Switzerland to have obtained a recognition of equivalence from the European Commission, to enable Swiss enterprises to offer their services in EU countries.

One question that arises is the need to know whether the self-regulatory bodies (SRO) established for the implementation of the money-laundering act (MLA), will survive the implementation of the FFSA in their current bipolar form (both MLA and ethical supervision) as executive regulators designated by the legislator. The question is even clearly posed as such in the report of 18 February 2013, which asks whether independent wealth managers (WM) can go on being supervised by the SRO or if direct prudential oversight by FINMA is necessary in order to be able to obtain the desired European equivalence; even though the Swiss Federal Department of Finance (FDF) recognises the advantages of the current system of self-regulation.

For generalist SRO, the resumption of oversight of WM by FINMA could be offset by the transfer of the Financial Intermediaries Directly subordinated to FINMA not practising wealth management to an SRO. The very fact that this option is on the table shows that the system of self-regulation or managed regulation has proved its worth.



Norberto Birchler
General manager
and Board Member

The report contains 22 proposals, each accompanied by a presentation of its advantages and disadvantages, as well as the question about which option is preferable, that is addressed to the communities concerned. At the end of February, ARIF launched a member consultation process. The proposals cover such varied aspects as the requirement for individuals to prove knowledge of the operating rules and technical skills, plus the requirement to be listed in a customer adviser register, not forgetting the creation of a public conciliation body with decision-making powers ¹.

Another solution, which is not envisaged in the report but which was formally mentioned by ARIF in August 2012, would be to recognise that the SRO have been delegated to carry out a public task and recommend this local regulation model to international bodies such as the FATF, the EU and the other financial partners in whom it mistakenly inspires distrust. This would enable the advantages of the two wealth manager supervision options proposed by the administration so far to be combined.

As part of the legislative process, ARIF, as a player in the oversight of the financial markets and in order to maintain and improve the reputation of the Swiss financial centre, is making efforts to submit a position on the draft legislation by the deadline.



Les Rencontres
de l'ARIF

sous forme de Déjeuner-débat

“ Perspectives et défis des
Gérants de fortune ”

Orateur invité : Dominique R. Lecoq
Avocat, LL.M. en sécurité et régulation financière

13 mai 2013

12h¹⁵ - 13h⁴⁵

Métropole Genève

Tarif : chf 50.-


Places limitées



Inscription sur : www.arif.ch

Les bonnes idées peuvent parfois
vous prendre en déjeunant


¹ Non-exhaustive list. For a complete reading list, see : [The hearing report for the Federal Financial Services Act project](#)

Training schedule 2013-2015

2013 - 2014					
E	3 September 2013	B	9 am - 5 pm	Geneva	Basic training - MLA
F	12 septembre 2013	C	14h. - 17h.	Genève	«Nouveautés dans la gestion de fortune»
F	10 octobre 2013	CoD	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
E	28 November 2013	C	2 pm - 5 pm	Geneva	«International judicial assistance and PEPs»
F	12 décembre 2013	B	9h. - 17h.	Genève	Formation de base - LBA
F	22 janvier 2014	C	14h. - 17h.	Lausanne	«Nouveautés LBA depuis 2013 : conséquences pratiques»
E	13 February 2014	CoD	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
I	5 marzo 2014	C	14 alle 17 ore	Lugano	Formazione continua (tema a definire) 
E	20 March 2014	B	9 am - 5 pm	Geneva	Basic training - MLA
D	3. April 2014	B	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
E	22 May 2014	C	2 pm - 5 pm	Geneva	«Terrorist financing»
F	18 juin 2014	C	14h. - 17h.	Lausanne	«Révisions LBA et CoD»

2014 - 2015					
F	17 septembre 2014	B	9h. - 17h.	Lausanne	Formation de base - LBA
F	8 octobre 2014	CoD	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
F	20 novembre 2014	C	18h. - 21h.	Genève	«KYC en relation avec l'Amérique latine»
E	11 December 2014	B	9 am - 5 pm	Geneva	Basic training - MLA
F	4 février 2015	C	14h. - 17h.	Lausanne	Formation continue (thème à définir) 
D	18. März 2015	B	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
D	19. März 2015	C	9 Uhr - 12 Uhr	Zürich	Weiterausbildung (Thema zu definieren) 
E	23 April 2015	C	2 pm - 5 pm	Geneva	«MLA and Trusts»
E	7 May 2015	CoD	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
F	21 mai 2015	C	14h. - 17h.	Genève	«Instruction pénale des affaires de blanchiment»
F	4 juin 2015	B	9h. - 17h.	Genève	Formation de base - LBA
F	25 juin 2015	C	14h. - 17h.	Genève	«Révisions LBA et CoD»

F in French
D in German
E in English
I in Italian

B MLA basic training
C MLA advanced training
CoD CoD basic training
 Theme to be defined

Integrity and training

The prevention of money laundering and the financing of terrorism requires personnel who are of integrity and appropriately trained. The financial intermediaries shall ensure the prudent selection of the personnel as well as the regular training of all concerned staff with respect to the relevant aspects of the prevention of money laundering and the financing of terrorism.

Legal developments : A cascade of hearings and consultations !

Common direction of regulatory reforms to boost Switzerland as a financial centre

Consultation procedure for the revised anti-money laundering recommendations (deadline : 15.06.2013)

The key points provided for in the bill are as follows:

- Introduction of a disclosure obligation for holders of bearer and registered shares of unlisted companies in order to enhance the transparency of legal entities, and extension of the due diligence requirement for establishing the identity of beneficial owners.
- Duty to verify identity and risk-based due diligence requirements for politically exposed persons in Switzerland and international organisations.
- Introduction of a new predicate offence to money laundering in the form of qualified tax fraud in the area of direct taxation and extension of the existing predicate offence in the area of indirect taxation.
- Purchases of real estate and movables may be paid for in cash only up to a sum of CHF 100,000. It is mandatory for payments of larger sums to be processed via a financial intermediary subject to the Anti-Money Laundering Act (AMLA).
- The effectiveness of the reporting system is to be increased and the procedures for financial intermediaries will be simplified.

[Explanatory report \(1\) for the consultation](#)

Consultation procedure for the enhanced due diligence requirements (deadline : 15.06.2013)

The due diligence requirements call for a risk-based assessment, which should prevent the acceptance of untaxed assets. Here, the most important indicators of increased risk are enshrined in the law. They can arise, for example, from a client's wish for greater discretion or for investments to be carried out in complex structure without any reasonable justification. The law likewise sets out indicators of when financial intermediaries can assume a reduced risk, for example if there is an international double taxation agreement between the client's country of domicile and Switzerland. A credibly designed self-declaration can also constitute a strong indicator of tax-compliant behaviour. The details are to be set out in self-regulation provisions that have to be recognised as a minimum standard by the supervisory authority. As resolved on 14 December 2012, the Federal Council wishes to refrain from introducing a widespread self-declaration obligation.

[Explanatory report \(2\) for the consultation](#)

Guidelines on asset management to be revised (deadline : 03.04.2013)

The revision foreseen will take the most recent decisions of the Federal Supreme Court on individual portfolio management into consideration as well as the amendments to the Collective Investment Schemes Act. The revised circular sets out in concrete terms the duties of asset managers. This mainly concerns the duty of investigation (client's risk profile), information requirements (risk disclosure), due diligence obligations (updating the client's risk profile) and disclosure duty for retrocessions.

[Explanatory report \(3\) for the consultation](#)

Hearing procedure about the Federal Financial Services Act (FFSA) project (deadline : 28.03.2013)

On 28 March 2012 the Federal Council instructed the Federal Department of Finance (FDF), in cooperation with the Federal Department of Justice and Police (FDJP) and FINMA, to commence work on a project to prepare the legal basis for the creation of a cross-sector regulation of financial products and services and their distribution, and to submit a consultation draft to the Federal Council by the autumn of 2013. The new guidelines should result in a strengthening of client protection within the Swiss financial market and enhance the competitiveness of the financial centre. Furthermore, the same conditions should be set for all market participants, thereby creating a level playing field and reducing distortions in competition between providers.

The new Act will introduce cross-sector regulations governing the conduct of market participants. Unlike existing regulations, these future provisions will start from the principle that all financial service providers – irrespective of their licensing status – are subject to the same minimum requirements with respect to conduct vis-à-vis their clients. All financial service providers who provide professional financial services to clients should therefore be covered by the scope of these regulations.

The term «financial service» is to be broadly defined, and should cover all activities that could lead to the acquisition of a financial product by a client. In particular, the guidelines should apply to investment advisory services, the management of client assets, and the acceptance and execution of orders to acquire or sell financial products. Financial products in this sense are deemed to be all products of an investment nature issued and offered in or from Switzerland, as well as certain insurance products. This includes, in particular, equities, bonds, derivatives, structured products, collective investment schemes, and certain insurance products.

Financial service providers are deemed to be all persons who provide financial services professionally. The new guidelines will therefore cover supervised market participants on the one hand, such as banks, securities dealers, insurers, fund management companies, and from now onwards all asset managers too. The obligations entailed by the legislation are aimed at supervised entities themselves, and not directly at their staff and contracting partners. However, the institutions covered by these provisions will have to ensure that their employees, as well as any third parties they use to provide a financial service, comply with the new rules of conduct. In particular, all natural persons who have relevant contact with clients, and act as employees or in any other capacity on behalf of supervised institutions involved in the business of providing financial services, should be obliged to provide proof of their knowledge of the applicable rules of conduct. On the other hand, market participants not subject to supervision will also be subject to the new rules if they provide financial services to their clients.

[Federal Financial Services Act \(FFSA\) : Key thrusts of potential regulation](#)

GM notice 2013

The 15th Annual General Meeting of ARIF will be held on Thursday, 7th of November 2013, from 5:30 pm, at the Swissôtel Métropole Geneva.



Be informed about international sanctions

ARIF makes available on its website a simplified [search engine](#) linked to a database of the State Secretariat for Economic Affairs (SECO) containing details of all the individuals, companies and organizations against whom/which international sanctions have been imposed by Switzerland. The online interface enables searches to be done for a specific name or country in these lists. Furthermore, in view of the obligation imposed on financial intermediaries to keep informed about the sanctions in force and to apply coercive measures, ARIF will continue to inform its members, through systematic mailings and RSS feeds, about the implementation of sanction measures by Switzerland, in particular the new implementing ordinances or amendments to existing ordinances.

Partial amendment of the CISA

Since it no longer complied with international standards, the Collective Investment Schemes Act (CISA), which dated from 2007, was in need of amendment. From now on, it is also mandatory for managers of foreign collective investments. If this amendment had not been made, Swiss fund managers would have been denied access to the European market from mid-2013 onwards. Furthermore, private investors are now better protected and the loopholes in the regulations governing the administration, custody and distribution of collective investment schemes have been filled. The amended version of the CISA came into force on March 1, 2013.

ARIF lunch-discussions

In general, ARIF wishes to offer a broad public a concept of convenient and convivial lunch-seminars, in order to foster synergy and exchanges of opinion among its members (and non-members) about topical issues or matters of importance to the sector – without any commercial interest.

Due to current events, the first lunch-discussion will be on the topic "Outlook for and challenges facing asset managers". If there are other topics you are very interested in, feel free to inform us so that we can let our other members benefit from them.

As registrations are limited, please reserve your places quickly on www.arif.ch



Affiliate, or isolated.



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ARIF, recognized by FINMA is:

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- > professionals who regulate professionals
- > a Code of deontology for a faultless reputation
- > a high level of expertise
- > about 500 members

[Become a member on www.arif.ch](http://www.arif.ch)

Training course programme 2013-2015

ARIF, through its training and information committee, is continually doing its utmost to offer in-depth and varied training programmes that are adapted to the language profiles and locations of its members. Thus for 2013-2015, no less than 8 basic AMLA training seminars, 4 initiation seminars on the ARIF Code of Deontology and 12 advanced AMLA training seminars have been scheduled, with subjects that are both varied and specific to financial intermediaries' activities or to particular topical issues.

Intended primarily for the members of our association, the ARIF training courses are attended by many financial intermediaries from all over Switzerland and are recognized by the other self-regulating bodies, FINMA and various financial institutions. So it is with constantly-renewed motivation that we are preparing the 2013-2015 AMLA training programme, which is probably one of the largest in Switzerland.



Next edition
September 2013

IMPRESSUM

Newsletter: 2 issues a year, distributed by electronic mail, hard copy if required.

Publisher: Association Romande des Intermédiaires Financiers (ARIF).

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