

## Revision of MiFID II: an agreement in principle to better regulate the financial markets.

2013 was the year of collective investment schemes, with the revision of the CISA aligned with the AIFM Directive of the European Union (EU). 2014 will be that of the drafting of the Financial Services Act (FSA), which will be modelled on MiFID II. To be sure, one has to look towards Brussels to anticipate what is in the pipeline in Bern.

Independent asset managers and investment advisers are sure to follow carefully the upcoming amendments and orientations of European law, insofar as they will have an impact on ongoing legislative plans in Switzerland, in particular the one concerning the FSA.

On January 14, 2014 an agreement in principle was reached between the European Council, the Commission and the European Parliament on the update of the proposed European Markets in Financial Instruments Directive (MiFID II), which was presented in 2011 and developed at the request of the G20. The main points of the agreement concern access to the infrastructure of the different markets (Central Clearing Rooms and Trading Platforms), High Frequency Trading (HFT), the commodities market, investor protection, increased transparency on the equity, bond and derivative instruments markets, technological innovation and access to EU markets for companies in third countries.

This last point is crucial for Swiss financial services providers having a European customer base. Access to European markets will be different depending on whether it concerns services aimed at individuals or professionals.

The status quo has been maintained with regard to cross-border services provided by third-country firms for private individual clients in the EU. Consequently, each EU Member State may apply its own regime, particularly with regard to the requirement for a local presence. In this respect, it is interesting to note that the current version of MiFID II introduces, on the contrary, a common regulatory framework at the level of the EU. It makes the provision of cross-border services to private individual clients contingent upon establishing a branch in one of the member states of the Union, the branch being subject to approval and supervision in the EU and authorized to provide services in other Member States.

Regarding financial services for professional clients in the EU, the agreement of January 14, 2014 makes provision, for service providers from third countries, for a harmonized regime of free access to the European area, without an obligation to establish a branch or subsidiary there, provided the regulatory and prudential framework of their country of origin is equivalent to that which will be established by the European legislation. Equivalence, as laid down by MiFID II, concerns subjection to adequate approval, supervision and control in the country of origin, sufficient equity capital and reserves, adequate organizational requirements for internal control and a prudential framework that ensures transparency and integrity, in particular to prevent insider trading and market manipulation. It will be reviewed by the European Commission for a transitional period of three years, during which the regime of each Member State will continue to be applied.

The agreement of January 14, 2014 is an important intermediate stage that brings to an end the negotiations initiated between the European Commission, the Council and the European Parliament nearly two years ago, when the Commission presented its proposal for MiFID II. However, the legislative process is far from completed, as the entry into force of the directive and the adaptation of the domestic law of the EU states are planned in 2015-2016. Meanwhile Switzerland will be able to negotiate with each EU country access to its market, both for financial services provided to private clients and for those aimed at professionals. In view of the result of the referendum on February 9, the task promises to be tough.

The Financial Services Act (FSA), which is being prepared at the Federal Department of Finance, so as to be eurocompatible with a view to allowing Swiss companies to have access to the EU market, will have to be based largely on the provisions of MiFID II. It is therefore essential that the requirements laid down by MiFID II in the area of equivalence recognition, in particular with regard to prudential supervision, are fully met in the draft law under preparation. The opening of the consultation phase for a preliminary draft of the FSA should take place during the second quarter of this year.



Giulio Ronga  
Vice president  
of ARIF

### Information meeting **free of charge**

April 11, 2014 / 2 pm to 5 pm / FER Geneva, auditorium

**in French**



What are my obligations as a Swiss financial intermediary resulting from the FATCA agreement ?

Am I subject to reporting to the IRS ?

Does the deadline of April 25, 2014 concern me ?

Do the custodian banks take care of my registration with the IRS ?

#### IMPRESSUM

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# Training schedule 2014-2015

2014					
<b>E</b>	20 March 2014	<b>B</b>	9 am - 5 pm	Geneva	Basic training - MLA
<b>I</b>	2 aprile 2014	<b>C</b>	14 alle 17 ore	Lugano	«Novità nel campo della LRD» (new date)
<b>D</b>	3. April 2014	<b>B</b>	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GWG
<b>E</b>	22 May 2014	<b>C</b>	2 pm - 5 pm	Geneva	«Terrorist financing»
<b>F</b>	18 juin 2014	<b>C</b>	14h. - 17h.	Lausanne	«Révisions LBA et CoD»
<b>F</b>	17 septembre 2014	<b>B</b>	9h. - 17h.	Lausanne	Formation de base - LBA
<b>F</b>	8 octobre 2014	<b>CoD</b>	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
<b>F</b>	20 novembre 2014	<b>C</b>	18h. - 21h.	Genève	«KYC en relation avec l'Amérique latine»
<b>E</b>	11 December 2014	<b>B</b>	9 am - 5 pm	Geneva	Basic training - MLA

2015					
<b>F</b>	4 février 2015	<b>C</b>	14h. - 17h.	Lausanne	Formation continue (thème à définir) ◆
<b>D</b>	18. März 2015	<b>B</b>	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GWG
<b>D</b>	19. März 2015	<b>C</b>	9 Uhr - 12 Uhr	Zürich	Weiterausbildung (Thema zu definieren) ◆
<b>E</b>	23 April 2015	<b>C</b>	2 pm - 5 pm	Geneva	«MLA and Trusts»
<b>E</b>	7 May 2015	<b>CoD</b>	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
<b>F</b>	21 mai 2015	<b>C</b>	14h. - 17h.	Genève	«Instruction pénale des affaires de blanchiment»
<b>F</b>	4 juin 2015	<b>B</b>	9h. - 17h.	Genève	Formation de base - LBA
<b>F</b>	25 juin 2015	<b>C</b>	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





Association Romande des  
Intermédiaires Financiers

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## Terrorist financing

**Jean-Paul Rouiller**  
 Director of the Geneva Centre for Training and Analysis of  
 Terrorism (GCTAT)  
 Worked for the Swiss Federal Office of Police (Fedpol)

**Josef Bollag**  
 Founder and chairman of the ISSN Foundation – Institute  
 for Security Analysis and Strategic Networking  
 Vice-president of ARIF

**other special guest - to be announced**

22 MAY 2014, 2 PM - 5 PM  
 BEAU-RIVAGE HOTEL, QUAI DU MONT-BLANC 13, GENEVA

Program and booking on [www.arif.ch](http://www.arif.ch)

### Occupational pension schemes: Authorization criteria for independent asset managers

(CHS PP / 20.02.2014)

Art. 48f of the ordinance on occupational old-age, survivors' and disability pension schemes (OPP 2) came into force on January 1, 2014. It contains an exhaustive list of the persons and institutions to which pension fund asset management can be entrusted. Concerning above all independent asset managers working in Switzerland, this new provision does not yet require that they should be subject to regular supervision; however, they must be authorized by the Occupational Pension Scheme Supervisory Commission (CHS PP\*) in order to be able to manage occupational pension scheme assets. During the authorization procedure, the rules of which have now been clearly defined, the CHS PP examines whether the conditions required of the managers are met at the time the application is made.

\*Commission de haute surveillance de la prévoyance professionnelle

### Dispatch on implementation of revised FATF recommendations (Federal Council / 13.12.2013)

The Federal Council adopted the dispatch on the new Federal Act for Implementing the Revised Financial Action Task Force (FATF) Recommendations for the attention of parliament. The bill aims to enhance the effectiveness of the fight against money laundering and takes into account developments in international financial crime.

Based on the results of the consultation procedure, the Federal Council is proposing in its revised bill changes in the three following areas: transparency in the case of bearer shares, introduction of predicate offences in the area of tax and the suspicious activity reporting system. A series of technical changes proposed by the cantons and interested parties have also been taken into consideration. The law introduces changes in seven areas as follows:

- Improved transparency in the case of legal entities and bearer shares, whereby the requirements of the Global Forum on Transparency and Exchange of Information for Tax Purposes are also met;
- More stringent obligations for financial intermediaries when identifying the beneficial owners of legal entities;
- Extension of the term «politically exposed person» (PEP) to include domestic PEPs and international organisation PEPs, as well as introduction of corresponding risk-based due diligence obligations;
- Introduction of a predicate offence for serious cases in the area of direct taxation and extension of the existing criminal offence of smuggling in the customs area to indirect taxation;
- Mandatory involvement of a financial intermediary for cash payments of more than CHF 100,000 for purchases of movable or immovable property;
- Increased effectiveness of the system for reporting suspicious activity;
- Improved implementation of the FATF standard regarding financial sanctions related to terrorism and terrorist financing.

### Asset managers' obligations since the entry into force of the revised CISA/CISO

Under the revised CISA and CISO, the asset managers who have not yet announced that they are subject to FINMA-recognized rules of conduct (that is, for ARIF, to the Code of Deontology (directive 14)), or who have not obtained from FINMA the status of collective investment distributor, may only lawfully advise their clients on collective investments, or purchase such investments for their clients, if cumulatively:

- they are exclusively Swiss collective investments authorized by FINMA, and
- the information is provided or the purchases take place solely within the framework of a management contract entered into with a "qualified" investor, that is, limited to:
  - banks, securities traders, fund managers, collective investment managers, central banks, or
  - insurance companies subject to supervision, or
  - public-law corporations and occupational pension institutions, or
  - companies whose cash flow is managed professionally, or
  - wealthy individuals who have requested in writing to be deemed qualified investors (opting in) and who have demonstrated that they have assets of at least CHF 5,000,000.- or cumulatively assets of at least CHF 500,000.- and sufficient knowledge, training and experience to understand the investment risks (the assets to be taken into consideration must be mainly of a financial nature; for further details, cf. article 6 CISO).

All the other cases in which information is provided on collective investments or such collective investments are purchased for clients, require that independent asset managers be subject to FINMA-recognized rules of conduct, (that is, for ARIF, to the Code of Deontology (directive 14)) and that they be announced as such.

This is the case in particular if the collective investments made or advised are not Swiss or not FINMA-approved, or are advised or made for non-wealthy clients as defined by article 6 CISO, or who have demonstrated they are wealthy but have not declared in writing that they wish to be deemed qualified investors, or have declared that they no longer wish to be so deemed.

Due to the fact that they have declared themselves to be subject to the Code of Deontology, and in keeping with the rules, independent asset managers who are members of ARIF (who are thus subject to the AML (Anti-Money Laundering Act) by virtue of their financial intermediary status), acquire the right to purchase for their clients Swiss or foreign collective investments authorized for distribution in Switzerland, even for clients who are non-wealthy within the meaning of article 6 CISO.

This is because, by entering into a written asset management contract with an independent asset manager who has declared that he/she is subject to the Code of Deontology, clients, even if they are not wealthy within the meaning of art 6 CISO, also acquire qualified investor status.

In all the scenarios described above, investors who are deemed qualified on the basis of their assets within the meaning of art. 6 CISO or of the signing of a written contract with an independent asset manager subject to the Code of Deontology, have the option of declaring in writing that they do not wish to be deemed as such; this is what is called opting out. (*continued on page 4*)

## GM notice 2014

The 16th Annual General Meeting of ARIF will be held on Thursday, 6th of November 2014, from 5:30 pm, at the Swissôtel Métropole Geneva.

## FATCA info from ARIF

Switzerland and the United States have amended the FATCA (Foreign Account Tax Compliance Act) agreement in line with the new timetable for FATCA implementation. To be compliant with FATCA from 1 July 2014, Swiss financial institutions have to complete their registration with the Internal Revenue Service (IRS) by 25 April 2014.

ARIF is organising a new information meeting open primarily to its members and also to other financial intermediaries. ARIF has been able to obtain the participation of two tax experts for this presentation and they will talk to us about the regulatory developments and their practical consequences.



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## Directive 1 : It's never been easier to join ARIF!

In order to facilitate the affiliation procedure, ARIF has adapted its Directive 1, application form, to make an electronic form that can be completed on a screen and sent by e-mail. The candidate is sure to save time and effort. It has never been as advantageous and fast to join our SRO thanks to this simplification of the processing of the application, combined with the fact that ARIF is for the time being not charging any enrolment fee and that in addition guarantees a reply within two weeks.

Directive 1 contains a new section on in-house companies. These can then be deemed to be domiciliary companies that can and must be fully included in the scope of the MLA supervision and auditing of the financial intermediary which has established them, and not subject in Switzerland to separate authorization or affiliation.

## Directive 12 : Application for authorization for a three-yearly MLA audit

In the ongoing process to improve and simplify administrative procedures, ARIF has formalised the conditions to apply for authorization for a three-yearly MLA audit into a [new form](#) available online. Members who wish to take advantage of such possibility for the 2014/2015 audit period, and consider that they fulfil the conditions for it, should complete and return the form to the ARIF's office [before 31 March 2014](#).

## Directive 14 : The amendments made to the Code of Deontology

ARIF has adapted its Code of Deontology (Directive 14) to the new FINMA circular (Circ.-FINMA 2009/1) "Guidelines on asset management" following the amendment of the Collective Investments Act in March 2013. The adaptations concern in particular 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.

The amendments made to the Code of Deontology took effect on January 1, 2014. A transitional period is granted until June 30, 2014 to the members who have subscribed, either voluntarily or on a compulsory basis, to the ARIF rules of conduct on asset management and investment advisory business, to comply with the amendments. The compliance with the new Code will be checked during the CoD audit 2013/2014.

## Opting-out in the context of an asset management contract *(continued from page 3)*

If a client opts out, the independent asset manager subject to the Code of Deontology may only advise this client on, or effect investments for the latter in, Swiss or foreign collective investments specifically authorized by FINMA for distribution to non-qualified investors.

The duty of information incumbent on asset managers subject to the Code of Deontology requires them to draw their clients' attention to this possibility of opting out and to its consequences. In order to make this formality easier for your clients, we are proposing a specimen form intended for this purpose. Use of this form is not compulsory and you can use another, substantially similar text provided that it is clear and explicit enough.

[Declaration of opting-out of the status of qualified investor in the context of a discretionary management contract](#)

