

## Time To Change Cross-Border Marketing For Fundraising? A Swiss Example

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New Swiss rules affecting external asset managers also have implications for foreign fund distributors and how they directly deal with Swiss high net worth individuals. This article outlines some of the unavoidably complex territory.

*s readers know, the Swiss market for external asset managers (EAMs) has been changed by new regulations under the Swiss watchdog FINMA. (See [here](#) for earlier articles about the changes.) In the following commentary from **Sales Road Maps Online**, its chief executive Cathy Brand talks about how investment firms must address their cross-border marketing approach via private wealth management channels. Brand and her colleagues have issued commentaries in these pages **before** (see another example [here](#)). The editorial team is pleased to accept these comments and of course the usual editorial disclaimers apply. Jump into the conversation! Email [tom.burroughes@wealthbriefing.com](mailto:tom.burroughes@wealthbriefing.com)*

Switzerland is globally recognised as a lucrative fundraising jurisdiction for serving the high net worth individual client segment, via Swiss private banks, single and multi-family offices, a large network of independent asset managers and global Swiss banks.

Switzerland substantially overhauled its regulatory regime with respect to the cross-border marketing of funds and financial services, which was enacted on 1 January 2020. Switzerland's regulator, the **Swiss Financial Market Supervisory Authority** (FINMA), provided a two-year transition period for industry players to comply with the new regime, which expired on 31 December 2021.

The end of the two-year transition (grace) period and the new rules coming into effect mean that alternative investment fund managers (AIFMs) require a distribution strategy re-think.

From 1 January 2022 onward, fundraising in funds and financial services from the private wealth management (PWM) channels in Switzerland requires foreign AIFM/asset managers to comply with the overhauled Swiss regime, which may substantially impact their marketing practices for Switzerland (especially in dealing with HNW clients).

Our AIFM clients ask us: "Do we need to change our AIF and separate managed account (SMA) fundraising strategy and marketing approach for Switzerland to target HNW individuals via PWM channels, now that FINMA's compliance 'grace period' has expired?"

Our answer is: Yes.

We delve into the Swiss regulatory regime as it has evolved over the past several years and clarify what these changes mean to AIFM/asset managers in their fundraising plans for funds and financial services sourced from Swiss HNW individual clients.

### **The compliance challenge with transition (grace) periods**

Transition periods are great.

These compliance grace periods help to give AIFMs time to fit their cross-border fundraising approach and compliance programme into the deadlines. But what happens – in this case – if you carry on with your cross-border marketing approach for Switzerland (especially to HNW individuals) exactly how you’ve always done it before 2020?

### **What were Swiss regulatory requirements for cross-border marketing before 2020?**

Marketing funds in any country is a regulated activity: Local fund marketing rules must be checked in advance of any AIF marketing activity in any jurisdiction, including Switzerland.

From 2013 to 2020 the threshold in the Swiss regulatory analysis was to confirm whether the foreign fund distributor (the AIFM based outside Switzerland, aka the AIF offeror) was conducting fund “distribution” into Switzerland (or not).

If the foreign fund distributor was conducting “distribution” of its foreign funds to HNW individuals in Switzerland (previously categorised as “Category II Qualified Investors”), this was considered a regulated activity and required the appointment of a licensed fund distributor and a fund distribution agreement, the appointment of a Swiss representative as well as a Swiss paying agent. Other compliance/reporting requirements applied as well.

These were all fund (or product) related requirements. During this period, as long as all fund-related requirements were met, AIFMs could speak directly to HNW individuals about their funds as part of their AIF distribution strategy for Switzerland.

Before 2020, there were no licence requirements at all for cross-border fundraising in SMAs managed under a discretionary account management agreement between the foreign AIFM and the Swiss client. This meant that foreign AIFMs could market, manage and service SMAs with Swiss investors of any type, including HNW individuals, without any regulatory requirements whatsoever.

How times have changed.

### **What changed in Switzerland’s cross-border marketing regulations in 2020?**

The new Swiss regulatory regime was enacted on 1 January 2020. At this point, the marketing of foreign AIFs to investors in Switzerland by AIFMs on a cross-border inbound basis became governed by two (2) Swiss federal acts and their respective implementing ordinances:

1. the Collective Investment Schemes Act (“CISA”) and the Collective Investment Schemes Ordinance (“CISO”), which govern product-related requirements to be satisfied by foreign collective investment schemes within the meaning of Art. 119 CISA (“CIS”) offered or advertised in Switzerland; (and)
  2. the Financial Services Act (“FinSA”) and the Financial Services Ordinance (“FinSO”) which define the conditions under which foreign distributors may engage in the marketing of foreign funds to investors in Switzerland including conduct rules (distributor-related requirements).
- FINMA gave the industry two years of a transition (or grace) period to comply with the new Swiss regulatory regime. Now that this transition period has ended, all cross-border marketing comes under the new rules.

Let’s investigate how this relatively new Swiss regime impacts an AIFM’s marketing and distribution strategy for Switzerland and their respective marketing compliance programme.

### **How to change your PWM channel cross-border marketing approach in Switzerland**

Many AIFMs want to target high net worth individuals in Switzerland by marketing directly to them, family offices and/or by distributing their AIFs via Swiss private banks or the large Swiss banks through fund distribution agreements.

Prior to 2020, a typical AIFM fundraising approach for Switzerland was for the AIFM sales team and/or CIO to have direct calls and meetings with HNW individuals in Switzerland to discuss their fund, its investment strategy, performance history and how to subscribe to the fund. This direct marketing/contact approach with HNW individuals applied to dealing directly with them as well as speaking to the client of a family office or PWM banking channel.

That “direct contact with HNW individuals” marketing approach, speaking to investors about your fund, is now subject to further regulatory requirements in Switzerland.

In other words, you cannot send out any fund marketing deck, have a Zoom/phone call or send an email to any HNW individual in Switzerland right now (2023, after expiry of the transition period) unless you fully comply with all Swiss regulations.

What you need to know upfront before fundraising from HNW individuals in Switzerland

Let's say you are a US-based AIFM (hedge fund manager) who wants to fundraise in your AIF from HNW individuals in Switzerland.

If you want to have any contact with HNW individual QIs (as defined) in Switzerland to speak about your investment fund or investment services (SMAs), either directly speaking to the Swiss HNW individual or chaperoned by a PWM channel in Switzerland, you have to comply with all requirements of CISA/CISO and FinSA (and any implementing ordinances).

#### **What does that mean?**

You must still comply with the previous regime's “product requirements” and appoint a Swiss rep and paying agent. However, now there is top-up regulation concerning “Conduct Rules” contained in FinSA.

Translation: If you want to speak directly to HNW individuals in Switzerland about your funds/SMAs, you've got some extra “Business Conduct Requirements” to fulfil (summarised below):

1. Registration (“signing up”) with a Swiss Ombudsman.
2. The fund/financial service distributor must be subject to “prudential supervision” in its own home jurisdiction.
3. Individuals who speak to Swiss HNW individuals about your funds or services must register as an “Investment Advisor” including the following requirements:
  - a. Individuals must sit for exams and pass an online test about Swiss regulations;
  - b. Each investment advisor must categorise/classify all target prospects;
  - c. The organisation must meet certain minimum capital rules and/or PI insurance policies are required;
4. Compliance with FinSA organisational rules.
5. Compliance with FinSA Code of Conduct rules.

#### **How to re-think your distribution plan to access HNW individuals in Switzerland**

When the head of marketing of a foreign fund distributor (an AIFM based outside Switzerland) sits around the table with their sales team to discuss their marketing strategy for Switzerland, the following threshold question should be asked:

“Can we sell our AIF/SMAs to HNW individual QIs in Switzerland without speaking to/contacting the HNW investor directly about our funds/services? Or, is it mission critical for us to speak directly with the HNW investor to explain our products and services in order to make the sale?”

-- No HNW individual contact: If you don't need to speak directly with HNW individuals about your funds/services, you still need to appoint your Swiss rep/paying agent. Your appointed PWM distributors in Switzerland (private banks, global banks, etc.) are the only party that can speak to their HNW clients about your products and services.

-- HNW individual contact: If you do need to speak directly with HNWIs about your funds/services, you will need to appoint your Swiss rep/paying agent and comply with all of FinSA requirements (five-point summary above). Among other FinSA business conduct rules, is your sales team ready to sit for exams and pass an online test about Swiss regulations as part of the investment advisor registration requirement?

The days of simple compliance with the "product requirements" and cracking on with direct marketing outreach to Swiss HNW individuals without any further compliance requirements are gone.

### **What's your downside risk for non-compliance with Switzerland's cross-border marketing regulations?**

The following five key distribution risks apply if you fail to fully comply with Switzerland's cross-border marketing regulations, especially to target HNW individual QIs for the marketing of your funds and SMAs:

1. Litigation risk;
2. Investor rescission rights risk;
3. Sanctions risk;
4. Reputation risk; and
5. Business franchise risk.

#### **Summary:**

If Switzerland is the goose, then its private wealth management client segment is the golden egg. FINMA has created regulation that safeguards its cottage industry with special protection afforded to Swiss high net worth individual QIs. Foreign fund distributors have to meet a higher compliance threshold if they want to deal directly with HNW individuals in Switzerland.

Behind every protectionist move of national country regulators (NCRs) is a rational motive. Remember, the vast number of feeder funds to Madoff's Ponzi scheme were funnelled from Swiss private banks, private wealth managers and feeder funds years ago, especially from Geneva-based institutions.

Know what to expect in advance for the compliance hurdles you need to overcome if you want to fundraise via PWM channels in Switzerland. Research the rules up front before you make any contact whatsoever – through any means including virtual contact – to HNW individuals in Switzerland.

Triggering the five key distribution risks, including sanctions by FINMA, lengthy and costly lawsuits from Swiss investors and business franchise and reputation risk, are just not worth it when you can prepare for full compliance with Swiss laws upfront and adjust your marketing campaign accordingly.