

## **FINMA Notifies Registered Investment Advisers of SEC Compliance Reviews**

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### **What's New?**

This past week, the Swiss Financial Market Supervisory Authority (FINMA) issued letters to Swiss-based asset management firms that are SEC Registered Investment Advisers (RIAs). The FINMA letter stated that the SEC notified FINMA that the SEC will be conducting a cross-border direct compliance review of the RIAs. FINMA granted its permission for such reviews pursuant to the relevant provisions of the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA).

The content of the letter provides some further information, while leaving other points open at this time.

The SEC review is stated to be on-site, implying that SEC audit teams will travel to Switzerland to inspect books and records. It is unclear whether some portion or all of such inspections could, however, be done remotely.

In the context of compliance reviews by a non-Swiss authority, FINMA emphasizes the need to protect sensitive customer and third-party information. It is critical that RIAs keep in mind their continuing obligations to protect such information to avoid violations of applicable Swiss laws while now complying with SEC review requirements.

Regarding protection of sensitive information, the SEC as host supervisor is not permitted to view any data that is directly or indirectly related to asset management, securities trading or deposit business for individual customers. FINMA has further detailed information in a set of guidelines available on its website regarding on-site inspections of foreign financial market oversight authorities conducted in Switzerland.

Rules also apply under the provisions of FINMASA on international assistance for the protection of customers and third parties, in the context of transmission of non-public information to the SEC prior to or following the on-site inspection. FINMA also has further information on such guidelines available on its website. RIAs are specifically reminded of their ongoing obligations to check whether the requirements for direct transmission are met for the protection of the rights of customers and third parties, notwithstanding the SEC supervisory reviews. Reports on transmissions of information of material importance must also be provided to FINMA.

Finally, the letter is silent as to the effect of these developments on the current moratorium on new Swiss-based RIA applications. Presumably the ability to conduct such compliance reviews should now alleviate whatever concerns the SEC may have had in this respect. However, they may take a wait-and-see approach to determine whether to allow such registrations to commence again, depending on at least the initial outcome of the reviews being conducted.

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## What Are the Implications of This Development?

As specialists in US law, US regulatory and compliance matters, and other cross-border issues, with a knowledge of related Swiss regulatory and compliance frameworks, we see this as a very positive development and a step in the right direction, both in serving US-person clients in Switzerland and for Swiss regulatory developments.

This is a day that those of us advising on the US-related business have been expecting for years. We have known this change is coming for the last 20 years and that day has now arrived when the SEC conducts full examinations of local SEC RIAs. Swiss Asset Managers registered with the SEC will be thoroughly examined according to US law, rules and regulations, which may be a far more stringent framework than the Swiss environment to which Swiss Asset Managers are accustomed. The examinations will be carried out by employees of the Division of Examinations of the SEC who are securities markets professionals. These SEC professionals may apply a stricter standard than external accountants at audit firms, working on hourly rates and applying standardised “one size fits all” checklists.

The RIAs do not pay for these examinations, with the SEC paying the full cost out of its own budget, which also stands in opposition to the “Audit firms as the extended arm of FINMA” approach. The professionals of the SEC will be working with tailored protocols, customised to the particular asset manager, based on individual analysis of the extensive disclosure documentation filed with the SEC annually (Forms ADV and ADV 2). Each examination will be different, risk-based and tailored to the specific business of the advisor. The differences in philosophy, approach, thoroughness, detail, quality, and in particular the effectiveness of the exams in guaranteeing securities markets integrity are substantial. This is a value-adding exercise in identifying weaknesses in firms’ compliance programs, contributing to ensuring market integrity.

The objective of these examinations is to give the SEC assurances which it justifiably wants, that Swiss-based firms, registered with the SEC, are complying fully with their US obligations. These examinations should open the way to further developments and growth in business with the United States and working with US-person clients around the world, which we greatly welcome as a positive development.

In addition, we hope and trust that FINMA will observe and learn from the methodologies employed by SEC staff. It would also be a positive development to see some of the benefits of these lessons applied in the Swiss regulatory environment in the coming years.

Finally, if the commencement of these reviews leads to a lifting of the moratorium on new RIA registrations in Switzerland, this would be an overwhelmingly positive contribution to the continued development of the US-related Swiss market. In addition to enhancing the diversity and depth of Swiss asset management offerings, new registrations should have further effects on other sectors of the financial services and professional advisory segments of the Swiss market. Greater regulatory stability combined with enhanced offerings should help Switzerland in maintaining and improving its position in the financial services sector where other global centres have made the playing field more competitive.

We look forward to working with our clients and other industry professionals in the coming months as we all respond to this ground-breaking development.

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