or (ii) by legal entities and their value is less than €5,000 for a single order and €10,000 considering the total annual orders.

Securities issued through equity crowdfunding

Pursuant to the Regulation, Web Portals are entitled to offer exclusively equity instruments for an amount not exceeding €5m[3] and with exemption from the obligation to draft a prospectus memorandum.[4] Therefore, no bond or other debt security issuance is permitted.

Once the order issued by the investor is successful, the investor shall for all purposes be a shareholder of the Innovative Startup Company. Nevertheless, it is essential to consider that throughout the period during which the company is regarded as an Innovative Startup Company, no profits shall be distributed among the shareholders, as expressly forbidden by the Regulations.

Penalties against Web Portal Managers

Should CONSOB verify a violation of the Regulation by a Web Portal Manager, and if justified by reasons of necessity and urgency, CONSOB may order the suspension of the Web Portal Manager's activities for a period of up to 90 days.

In the event that the violations were of particular gravity, pursuant to Article 23 of the Regulation, CONSOB may order the exclusion of the Web Portal Manager from the Register.

Notes

1 CONSOB is the Italian public authority responsible for regulating the Italian securities market.
2 Decree 179/2012, converted with Law 221/2012.
3 Such a limitation to the offerable amount is set forth in Article 100, paragraph 1(c) of the TUF, which is referred to under Article 100 ter, paragraph 1 of the TUF.
4 Such an exemption is provided for by Article 100, paragraph 3 of the TUF, pursuant to which investors that meet the requirements set forth under Article 100, paragraph 1 of the TUF are entitled, but not required, to draft a prospectus memorandum according to the applicable European legislation.

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Swiss new rules on marketing of collective investment schemes to qualified investors

After a two-year legislative process, the revised Swiss Collective Investment Schemes Act (CISA) and its implementing ordinance have come into force as of 1 March 2013. The revision, triggered by the Alternative Investment Fund Manager (AIFM) Directive, has introduced important changes to private placements under the collective investment schemes regime.

As far as the marketing of collective investment schemes is concerned, the former concept of public distribution as opposed to private placement has been abandoned in favour of a whole new paradigm. Any marketing of collective investment schemes is now governed by CISA with some limited exceptions. CISA has introduced the concept of distribution as a defined term; any activity not qualifying as distribution remains unregulated.

Distribution is defined as any offer or advertisement of collective investment schemes that is not exclusively directed towards supervised investors, that is, investors supervised by the Swiss Financial Market Supervisory Authority (FINMA), such as banks, securities dealers, fund management companies, licensed fund managers or insurance companies subject to FINMA's supervision. This means that any offer or advertisement directed towards qualified investors that are not supervised, such as pension funds, corporations with professional treasury or high net worth individuals (as defined by CISA) is deemed distribution and therefore subject to CISA.

CISA contains notable exceptions to the concept of distribution, such as 'reverse solicitation'. This exception existed before the revision and has been upheld. The reverse solicitation exception applies to any request for information from an investor or any outright instruction from an investor to purchase units of a specific collective investment scheme. In order for the request of information or the instruction to qualify for the reserve solicitation exception, it must be made without prior solicitation from the financial intermediary. CISA further provides that any offer or advertisement made under a written advisory agreement entered into with an investor for the long term and for consideration is not deemed distribution. Finally, the purchase of collective investment schemes' units by a regulated financial intermediary or by an independent asset manager subject to the Swiss anti-money laundering rules and the code of conduct of a professional organisation under a written discretionary investment management agreement is not deemed distribution.

Generally speaking, the revised CISA has narrowed down the number of situations where the marketing of collective investment schemes used to be unregulated. If the reverse solicitation exception and the purchase of collective investment schemes under a written investment management agreement were not regulated under the former regime, this was also, but is no longer, the case of marketing directed towards qualified investors. The marketing of collective investment schemes under an advisory agreement is, however, an exception that has been introduced by the revised CISA and which somehow compensates for the suppression of the marketing to qualified investors exception.

As part of the change of the marketing rules, the concept of qualified investors has also been amended. The main changes regard the definition of high net worth individuals and the suppression of the qualified investor status for independent asset managers.

The consequence of carrying out distribution activity directed towards qualified investors is a new need for any individual or financial intermediary to obtain a distributor's licence from FINMA when this activity is not limited to Swiss funds reserved to qualified investors. This requirement does not apply to supervised financial intermediaries, such as banks, securities dealers, management companies and licensed fund managers, who are exempted. Practically, the need to obtain a distributor's licence to carry out distribution activity imposes on financial intermediaries, who prior to the revised CISA distributed collective investment schemes under the qualified investor exception, to either apply for a distributor's licence or to market collective investment schemes under an advisory or an investment management agreement. This issue, however, mainly concerns independent (unregulated) asset managers.

In addition to the requirement of a distributor's licence, the distribution of collective investment schemes, as defined in the revised CISA, to any type of investors imposes enhanced disclosure requirements on distributors even if the distribution activity is directed towards qualified investors only.

Another change introduced by the revised CISA is the need for foreign funds distributed to qualified investors to appoint a representative and a paying agent in Switzerland by 1 March 2015. Foreign funds are furthermore required to enter into a written distribution agreement under Swiss law with the fund's Swiss representative before 1 March 2015, and the fund's documentation must mention the Swiss representative, the Swiss paying agent and the place of jurisdiction.

CISA contains special rules when the distribution of collective investment schemes is made from Switzerland to qualified investors abroad. This activity does not fall within the scope of CISA, provided the distribution activity is directed towards qualified investors within the meaning of Swiss law or within the meaning of the corresponding foreign law. CISA's implementing ordinance sets out minimal conditions in this respect. Qualified investors within the meaning of the applicable foreign law are limited to institutional investors with professional treasury, in particular, financial intermediaries and insurance companies subject to supervision, public corporations, pension funds and companies with professional treasury; high net worth individuals that fulfil conditions similar to the ones provided for under Swiss law; and finally, individuals who have entered into an investment management agreement with a financial intermediary subject to supervision who purchases collective investment schemes' units for clients' accounts.

More interestingly for foreign financial intermediaries, the revised CISA also

provides for rules in cases of distribution from abroad to qualified investors in Switzerland on a cross-border basis. This type of distribution, which was not regulated under the former CISA, is still possible under more restrictive conditions. Any foreign financial intermediary can market collective investment schemes from abroad to Switzerland without any licensing requirement, provided they are, in their country of domicile, authorised to market investment funds and subject to appropriate supervision. Although the regulator has not issued any guidelines as to what is deemed such appropriate supervision, it is anticipated that supervision by any European Union or United States regulator will be deemed appropriate.

As the requirement of appropriate supervision will not be met by offshore financial intermediaries, such as offshore management companies or offshore fund managers, they will no longer be able to market their products to qualified investors other than supervised investors in Switzerland on a cross border basis. They will have to appoint an authorised distributor subject to appropriate supervision who will have to enter into a distribution agreement with the fund's Swiss representative before 1 March 2015.

Swiss and foreign financial intermediaries are now trying to adapt to this change of paradigm within the deadlines set forth by CISA and its implementing ordinance. However, many are still unaware of the changes and their consequences and do not measure the risk of carrying out activity that is now regulated, as it qualifies as distribution under the revised CISA. FINMA has already started to investigate financial intermediaries suspected of carrying out distribution activities without being authorised, and its enforcement department will not hesitate to impose sanctions under CISA in cases of infringement of the law. These sanctions are of a criminal nature.

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Recent developments in the Brazilian securities market

This article discusses the new rules recently issued by the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários (CVM)) regarding: (i) Brazilian Market Index Investment Funds (Index Funds), also known in Brazil and abroad as Exchange Traded Funds (ETFs); and (ii) additional restrictions imposed on the activity of securities analysts (*analistas de valores mobiliários*) in our jurisdiction.

New Rules on Brazilian ETFs

CVM Instruction No 537 of 16 September 2013 ('CVM Instr 537/2013') amends CVM Instruction No 359 of 22 January 2002 ('CVM Instr 359/2002'), which regulates the incorporation, administration and operation of ETFs.

An ETF is typically organised as an open-ended joint ownership, whose resources are intended for investment in a securities portfolio that seeks to replicate the variations and profitability of a benchmark index for an indefinite period of time. For this purpose, a benchmark index means a specific market index recognised by the CVM, with which the investment policy of the ETF is associated.

The new rules allow managers of ETFs to use investment strategies that reflect the behaviour of fixed income indices in the performance of the fund. The indices accepted for the authorisation of this kind of investment vehicle were restricted until this moment to indices based on asset portfolios of variable income.

Furthermore, the CVM decided to set forth the criteria to be followed for determining the benchmark index, which will have to be used by the market participants in their applications for authorisation to manage ETFs. In connection with the approval of the benchmark index, at least the following criteria will be considered: