

November 2013

Guidelines on the duty to keep documentary records according to section 24(3) CISA (Collective Investment Schemes Act)

Introduction¹

The duties set out in these guidelines are without prejudice to any other statutory, contractual or self-regulatory duties incumbent on authorised institutions.

Art. 1 Basic principle

These Swiss Bankers Association guidelines apply to the duty to keep documentary records according to section 24 (3) CISA. They set a minimum standard, and any authorised institution may apply higher standards.

These guidelines govern the form and content of the duty to keep documentary records. This duty only applies when an authorised institution provides *individual* advice to a client, i.e. when a client advisor makes a *personal recommendation to buy* units or shares in one or more *collective investment schemes* ("personal recommendation").

The duty to keep documentary records only applies where distribution activity within the meaning of section 3 CISA and section 3 CISO is conducted (for more details see FINMA Circular 2013/9 Distribution).

There is no duty to keep a documentary record when a client is given a personal recommendation to *hold* or *sell* units or shares in a collective investment scheme.

Art. 2 Client needs

The documentary record must contain information gathered on investment objectives and an indication of the client's risk profile. Existing information provided by the client when drawing up the general investment profile may be used.

¹ Translation of the original German version. In case of any divergence, the German version shall prevail.

Art. 3 Reasons for the client advisor making a personal recommendation to buy units or shares in a collective investment scheme

In addition to any information already gathered or held according to article 2, the reasons for the client advisor making a personal recommendation to buy units or shares in one or more collective investment schemes must always be documented.

Art. 4 Form of the documentary record

The documentary record must be in writing or on any other form of data carrier that allows it to be reproduced unchanged in writing for the client at any time. On that condition, the authorised institution is free to choose the type of the recording and the suitable data carrier.

The requirements for written form set out in sections 11 et seq. of the Code of Obligations (CO) do not apply, i.e. neither the authorised institution nor the client is required to sign the documentary record.

Art. 5 Language

The documentary record should generally be kept in the language in which the advice was given. The language selected by the client for correspondence may also be used. Authorised institutions may choose between the two.

Art. 6 Informing the client

Where a client advisor makes a personal recommendation to a client to buy units or shares in a collective investment scheme, the client must be informed in writing of the content of the documentary record drawn up under articles 2-4 above. This may be done in person or by

post, fax or e-mail or via the internet. The requirements for written form set out in sections 11 et seq. CO do not apply.

The client may expressly waive the handing over of the documentary record. Such waiver must be clearly recorded.

Art. 7 Informing the client where advice is given in writing

Where advice is given by correspondence there is no need to handing over the documentary record as specified in article 6 above, provided the key disclosures in articles 2-3 above are already included in the correspondence of the authorised institution.

Art. 8 Relationship to civil law

These guidelines govern the form and content of the documentation imposed by the supervisory regulation. Questions of the legal effectiveness or validity of any purchase of units or shares in collective investment schemes are not within the scope of these guidelines.

Art. 9 Entry into force

These guidelines have been recognised by FINMA as a minimum standard within the meaning of section 7 (3) of the Financial Market Supervision Act of 22 June 2007. They enter into force on 1 January 2014 and apply until 31 December 2015.

