

## NEWSLETTER 01 2020

### LSFIN – LEFIN : What duty to inform?



Since the enforcement ordinances are validated and the FINMA ordinances are in project, financial intermediaries affected by the new legislative framework LFin / LSFIn will have to comply with new requirements.

One of the main measures of the LSFIn relates to strengthening of the duty to inform, at least on paper, in comparison with the uses of the profession and the framework rules in force since the 1st of July 2013.

The purpose of this newsletter is to summarize the new obligations in terms of duty to inform and compare them to the existing framework.

At this stage, three management models are raised in the new rules.

- Wealth management;
- Investment advice, divided in :
  - Investment advice for isolated transactions or,
  - Investment advice for an entire portfolio
- « Execution Only » mandates

The new laws formalize a certain number of principles in the treatment of contracts and services rendered to customers. The great feature of LSFIn is to define the standard level of information according to the type of services offered and also according to the customer who receives them.

This categorisation will therefore have a great impact on the level of information prior to and during the contract to be provided to customers, but also on the way of formally documenting exchanges with customers.

Indirectly, we can see that these details provided by the new law make good practices implemented by managers mandatory after the establishment of framework rules and also according to the jurisprudence of the federal court.

In contrast, managers who fail to comply with the rules defined in the law would therefore no longer be considered as deviant from directives and practices but as offenders who would not comply with the law.

Coercion in relation to the implementation of these legislative changes is therefore stronger, subject to penalty of fines or more customer complaints, leaving less room for interpretation and therefore litigations more easily judged by the courts.

	Wealth management		Investment advice			Execution only	
	Framework rules	LSFin	Framework rules	LSFin		Framework rules	LSFin
				for isolated transactions	for an entire portfolio		
Written contract	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nature of the service provided	Mentioned in the mandate	Mentioned in the mandate	Mentioned in the mandate	Mentioned in the mandate		Mentioned in the mandate	Mentioned in the mandate
Risks presentation	General presentation (e.g. Risk booklet from ASB)	Presentation of risks related to investment strategy selected	General presentation (e.g. Risk booklet from ASB)	Presentation of risks related to investment instruments suggested (BIF <sup>(1)</sup> )	Presentation of risks related to investment strategy selected	None	General presentation (e.g. Risk booklet from ASB - new template not yet published)
Information on costs	Management fees and retrocessions <sup>(2)</sup>	Management fees, retrocessions <sup>(2)</sup> , economical relations with third parties, conflicts of interests and methodology of selection of financial instruments	Management fees and retrocessions <sup>(2)</sup>	Management fees, retrocessions (2), economical relations with third parties, conflicts of interests and methodology of selection of financial instruments		Management fees and retrocessions <sup>(2)</sup>	Management fees, retrocessions <sup>(2)</sup> , economical relations with third parties, conflicts of interests and methodology of selection of financial instruments
Definition of the objectives and the strategy with the client	Yes	Yes	Yes	No	Yes	No	No
Risks / responsibilities regarding the investments	+++	+++	+	++	++	+	+
Asset manager's decision-making power	+++	+++	+	+	+	None	None
Taking into account the knowledge, experience and financial capacity of the client.	+++	+++	+++	+++ <sup>(3)</sup>	++	+	+
Adequacy check	++ <sup>(4)</sup>	++ <sup>(4)</sup>	+++	+++	++ <sup>(4)</sup>	None <sup>(5)</sup>	None, but obligation to inform in the absence of verification <sup>(5)</sup>
Obligation to document	++	++	+	+++ <sup>(6)</sup>	++	+	+
Rights to surrender	+	+++ <sup>(7)</sup>	+	+++ <sup>(7)</sup>	+++ <sup>(7)</sup>	+	+++ <sup>(7)</sup>

- (1) *Basic Information Sheet (BIF) on products, the format remains to be defined to date in Switzerland but in essence, this should be close to the mandatory information sheets in the EU in the context of the PRIIPs regulation.*
- (2) *Remuneration / retrocessions from third parties are in principle acquired by the customer. The manager may keep them if the latter has correctly informed his client of the existence of such retrocessions, which implies a prior waiver by the client (including calculation parameter and range as well as the existence of any conflict of interest in connection with their perception). These criteria continue to apply at least under LSFIn.*
- (3) *As part of an advisory mandate on isolated transactions, the manager must ensure the appropriateness of the service rendered / its recommendation. He must ensure the experience and knowledge of the client with respect to each specific product to ensure that he understands the risks associated with this financial instrument.*
- (4) *The verification of the adequacy does not intervene specifically product by product but in relation to the coherence of the strategy, in relation to current and future commitments, to the personal and financial situation of the client, his income and his propensity to risk as well as special investment instructions / restrictions.*
- (5) *The adequacy is not checked, but the service provider nevertheless has a duty of warning in the event of an operation which is manifestly too risky or erroneous.*
- (6) *The obligation to document the services provided is the most important in the context of advice on isolated transactions, since this assumes having performed and documented the due diligence related to the verification of the appropriateness for all individual transactions.*
- (7) *All the data collected on customers, the services provided, the costs linked to the services, the composition and evolution of the portfolios in the event of global management as well as the results obtained must be documented and able to be delivered within 10 days in customer request case. When the service provider does not carry out a verification of the appropriateness or adequacy, he must be able to supply, within the same period, the documents attesting to the informed waiver (ie after information and warning) of the customer to these verifications.*

It can therefore be seen that the new LSFfin / LEFin regulations do not fundamentally change the duties linked to a management or advisory mandate. It further categorizes the various services and obligations relating thereto, but above all strengthens the formalism linked to the services provided to customers while strengthening the customer's right of surrender (to all data concerning them).

These documentation and reporting duties will only apply to private clients and professional clients who have not exempted the provider.