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### **Portfolio Managers & Trustees – The Time to apply for a FINMA License is NOW**

The deadline for submitting your application for a license as portfolio manager or trustee by the Swiss Financial Market Supervisory Authority (FINMA) is approaching quickly. **By 31 December 2022** portfolio managers and trustees must have requested a license. Up until now, **only 213** out of the around 2500 affected portfolio managers and trustees have received the FINMA license. We'll guide you on what awaits you and what to look out for in the application process.

#### **1. Which portfolio managers and trustees are affected?**

A portfolio manager is a person mandated to manage assets on a commercial basis in the name of and on behalf of clients or who may **dispose of clients' assets** in any other manner (Art. 17 FinIA). Portfolio managers manage individual portfolios. Managers of collective assets who manage the assets of collective investment schemes or occupational pension schemes below the defined thresholds (see Art. 24 para. 2 FinIA) are also deemed to be portfolio managers.

A trustee is a person who on a commercial basis manages or **disposes of a separate fund** for the benefit of a beneficiary or for a specified purpose based on a restricted grant given namely in the instrument creating a trust within the meaning of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition. The trustee manages the separate fund, ensures its value is maintained and employs it in a restricted manner.

Activities that are subject to prior licensing include:

- ✓ Management of individual portfolios
- ✓ Trustee activity
- ✓ Investment advice of collective assets
- ✓ Investment advice of individual portfolios
- ✓ Offering of financial instruments
- ✓ Trade assayers according to Art. 42bis PMCA
- ✓ Management of collective assets under de-minimis threshold

#### **2. How do I obtain a license?**

Portfolio managers and trustees must be authorised by FINMA. When applying for authorisation, portfolio managers and trustees must provide evidence that they are supervised by a **supervisory organisation (SO)**. The five FINMA-licensed SOs are:

- ✓ AOOS - Schweizerische Aktiengesellschaft für Aufsicht, Zürich
- ✓ FINcontrol Suisse AG, Zug
- ✓ ORGANISME DE SURVEILLANCE DES INSTITUTS FINANCIERS OSIF, Geneva 3
- ✓ Organisme de Surveillance pour Intermédiaires Financiers & Trustees SO-FIT (Supervisory Organisation for Financial Intermediaries & Trustees SO-FIT), Geneva
- ✓ OSFIN Organisation de surveillance financière, Neuchâtel

The authorisation process is handled **electronically via the EHP survey and application platform**. It consists of five steps:



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#### **a) Self-registration**

Portfolio managers and trustees must self-register to gain access to the EHP. They can do this via the FINMA homepage. Once the self-registration has been verified by FINMA, the EHP can be accessed via the FINMA portal using two-factor authentication.

#### **b) Preparing application**

An application template which can be completed directly on the EHP is used to apply for authorisation. The application requires many documents to be prepared or obtained. Portfolio managers and trustees may outsource certain services such as IT, risk and compliance.

#### **c) Transmitting application to SO**

As part of the authorisation process, portfolio managers/trustees select one of the authorised SOs, contact them, and subsequently send them the authorisation application including attachments via the EHP.

#### **d) Checking of the authorisation application and confirmation from the SO**

The SO verifies the applicant's affiliation to its organisation on the basis of the authorisation application. When verification is complete, the SO provides the portfolio manager or trustee with written confirmation of their affiliation. The SO sends the relevant confirmation document to the applicant via the EHP or by other means.

#### **e) Transmitting the application and SO confirmation to FINMA**

Once applicants receive confirmation from the SO, they should send this with the authorisation application to FINMA via the EHP. FINMA will process the application once it has been formally submitted in full, i.e. including the SO confirmation and enclosures.

#### **3. Do I have to wait for the license to carry out my commercial activity?**

You can continue to operate until a decision is reached regarding your license as long as you are supervised by a self-regulatory organization (SRO). If portfolio managers and trustees don't submit their application by the end of 2022, they will **no longer be able to continue their activities**. There is no provision for an extension of this statutory deadline.

#### **4. Is there a "grandfathering" provision?**

No. In the course of its discussions, **Parliament rejected the "grandfathering" provision** (i.e. the possibility of making exceptions to the authorisation requirement for portfolio managers who have already been established for many years).

**Careful preparation takes time. Have you already started?**

**Please feel free to contact us for more information, we are happy to help.**

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