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The *long* and the *short* of it

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UBS consolidates PB unit as Mitch Moore steps down

Departure of global head of prime services spurs merger of prime services and global synthetic equity units

BY ELANA MARGULIES

MITCH MOORE, UBS'S global head of prime services, has stepped down just over a year after returning to the position, *HFMWeek* can exclusively reveal.

According to an internal memo, seen by *HFMWeek*, Moore has decided to leave due to personal reasons. In his wake, UBS will now consolidate its prime services and global synthetic equity businesses into a new unit headed by Jason Barron.

The memo, which was sent to bank employees earlier today, revealed Barron as the bank's global head of financing services. It also detailed the hire of Roger Naylor, formerly of Deutsche Bank, as UBS's head of global equity derivatives.

According to the memo the consolidation of the two units will allow UBS to, "leverage natural synergies across these businesses and align Jason's trading background and knowledge of markets, funding and infrastructure."

Barron, previously global head of equity derivatives, will remain a member of the bank's equities management committee and also replace Moore on the FICC (fixed income, currencies and commodities) executive committee.

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FOCUS ON

SWITZERLAND

As Switzerland prepares to amend its legal framework, bringing the industry in line with the EU's Alternative Investment Fund Managers Directive, uncertainty about its impact remains rife. Dr Guenther Dobrauz-Saldapenna and Dieter Wirth of PricewaterhouseCoopers provide an update

Dr. Guenther Dobrauz-Saldapenna
heads PwC Zurich's Asset Management Regulatory practice. Before that he practised with Deloitte and as an attorney. For a number of years he also served as legal counsel to a VC/PE firm and an international hedge fund. He also lectures on alternative investment law and is co-founder of the Swiss Strategies Group.

Recently there has been a lot of discussion and indeed confusion about the impending rule changes for Swiss-based hedge fund managers. The battle still rages, but as the fog slowly starts to clear we would like to set the record straight about the current state of affairs.

EU STANDARDS ALSO FOR SWITZERLAND?!

Obviously the starting point for all of this was the adoption of the EU Alternative Investment Fund Managers Directive (AIFMD). Switzerland is not a member state of the EU and thus, strictly speaking, is under no obligation to transpose the directive into its national law. Since it has been widely recognised that this directive might have a similar branding and indeed market-segmenting effect on the manager level as the Ucits Directive has had on the retail product level, and to ensure continued access of Swiss players and service providers to the hugely important EU harmonised market, it was decided that a partial revision of the Swiss Collective Investment Schemes Act (CISA) should be undertaken in an effort to align it with the new EU standards.

IN A NUTSHELL

The proposed changes focus on subjecting Swiss-domiciled asset managers of foreign collective investment schemes other than Ucits funds – for example, foreign alternative investment funds (AIFs) – for the first time to Swiss licensing and supervision requirements and on introducing a new concept with respect to the regulation of distribution activities for collective investment schemes. The primary aim of the latter is to replace the present concept of 'public promotion' with 'distribution' as a key criterion for regulating the offering of AIFs, and to narrow the rather extensive definition of 'qualified investor'.

“THE PROPOSED CHANGES FOCUS ON SUBJECTING SWISS-DOMICILED ASSET MANAGERS OF FOREIGN COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS FUNDS FOR THE FIRST TIME TO SWISS LICENSING AND SUPERVISION REQUIREMENTS”

HISTORY REVISITED – POSITIONAL WARFARE

A first draft of the suggested amendments to the law was published in July 2011 and the consultation procedures initiated. During the subsequent sounding phase, the draft proposal elicited a bevy of comments from the financial industry and in certain points met with rather stiff resistance. In particular, the fact that the suggested new rules would have partially gone beyond AIFMD requirements and would have effectively constituted a gold plated 'Swiss finish' was criticised. One key point of concern was the fact that the de minimis rules of the AIFMD, which place managers under a mere registration requirement rather than full licensing obligations if their assets under management are less than €100m (in the case of leveraged products) or €500m (for certain unleveraged close-end products), were not provided for. Also debated was the extensive scope of distribution, covering all product distributions from Switzerland and not just those to the EU. Another bone of contention was the effective exclusion of offshore products through the requirement that a Swiss representative of foreign AIFs intended for distribution in Switzerland vouches for the qualitative product equivalency with Swiss vehicles. On 2 March 2012, the Federal Council published its draft bill together with an explanatory report. This contained de minimis provisions and further changes along the lines of what the industry had recommended and demanded. Early May saw the publication of yet another revised version of the draft bill that reflected the conclusions of the Swiss Council of States' relevant commission. It further defanged some of the provisions contained in the original draft.

TAKING STOCK

As a long-time industry request, the opening up of the licensing regime also to Swiss-based AIFMs of foreign AIFs in line with AIFMD is more than welcome. The reintroduction of the de minimis thresholds as included in the latest draft should provide the necessary breathing room for innovative start-ups which are typically focused on establishing a track record with either their own or FFFs' (friends, family and fools) money before soliciting any significant further funding. Requiring them only to register rather than to become fully licensed should avoid frontloading them with costs from extensive licensing and reporting requirements until they are ready to go out to the qualified public, at which point they can then opt into the licensing regime. The industry's concern about the licensing dimension primarily centres on what the licensing requirements actually are. They will obviously become clearer once the implementing ordinance associated with the law becomes available. The biggest worry, however, is about the actual practice applied by the Swiss Financial Market Supervisory Authority (Finma). Of late, this has repeatedly been compared to a black box and Finma has gained quite a reputation for being rather adversely inclined in terms of hedge funds in general and their managers in particular. Here, the hope is that the rather extensive discretion of the supervisory authority will be limited in future and that it finds the way back to its

The Grossmünster cathedral in Zurich on the river Limmat

former pragmatic and consensus-oriented form. The industry has interpreted Finma's recently published official template for licence applications as a first positive sign in this regard.

All distributors, including those of funds for qualified investors, will require authorisation; and their products, a representative and paying agent. In this context it is important to note that the broad Swiss definition of 'qualified investor' will be narrowed significantly. Today this definition includes high-net-worth individuals (HNWIs) with net financial assets of at least CHF2m, who may have no specific investment experience, and investors otherwise considered 'retail' but who have concluded a written discretionary asset management agreement with a regulated financial intermediary or independent asset manager. The latter will in future only include supervised financial intermediaries (such as banks, securities dealers, fund management companies, regulated asset managers and central banks), supervised insurance companies, public law institutions and pension funds and companies with professional treasury operations. The good news is that, according to the latest draft, HNWIs can opt to be treated as qualified investors. It is also important to note that the purchase of AIFs by regulated or independent asset managers for inclusion in the portfolios of clients with whom they have entered into a written discretionary asset management agreement is not considered distribution. In effect, the stricter distribution rules do not apply and this important distribution channel remains open.

We are also quite happy about the developments right next door to the Swiss border. The Liechtenstein AIFM regime is currently taking shape and will offer an attractive and fully AIFMD-compliant alternative within commuting distance for managers based in German-speaking Switzerland who require access to the AIFMD passport. This alternative is offered before it becomes available to third-party countries or who wish to benefit from the new Liechtenstein administrator model, which is not only specifically tailored to the needs of hedge funds but will also allow for efficient AIFM structuring for highly focused managers who seek to outsource non-core activities.

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BACK TO THE FUTURE

The law is still a work in progress. Switzerland's political system, which has been built over centuries based on the principles of extensive direct democracy, true federalism, subsidiarity and comprehensive stakeholder consensus building, does not lend itself to quick fixes. Accordingly, not too much importance should be attributed to snapshots taken of this piece of work while in process. We firmly believe that the final result will be well-balanced and designed to meet the needs of the industry and regulators alike. Following the decision of the Council of States, parliament will continue to deal with the bill. The National Council's relevant commission will already debate the draft in June. It will then be considered by the National Council itself later this year (likely in the autumn session) with the ultimate goal that the revised law should enter into force in early 2013. The related implementing ordinance is being prepared in parallel and should take effect at the same time as the revised law. We will make sure to keep you updated on all developments, so please bear with us and watch this space. ■