



association of the
luxembourg fund industry

| **guidelines**

guidance on the UCITS borrowing principles

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ALFI has recognized the need for clarification of Article 50 of the Law of 20 December 2002 relating to Undertakings for Collective Investments in Transferable Securities (as amended). Differing interpretations of rules for borrowing for UCITS are discussed within the Luxembourg fund industry, including the advisory and audit bodies.

In consultation with ALFI, the CSSF confirmed with letter dated 17 July 2009 the following guidance on the regulatory interpretation of the UCITS borrowing principles.

Article 50 of the law dated 20 December 2002 relating to Undertakings for Collective Investment (as amended) :

(1) Neither:
– an investment company, nor
– a management company or depositary acting on behalf of common funds,

may borrow.

However, a UCITS may acquire foreign currency for means of a back-to-back loan.

(2) By way of derogation from paragraph (1), a UCITS may borrow the equivalent of:
a) up to 10% of their assets provided that the borrowing is on a temporary basis;
b) (...).

- A UCITS cannot use its borrowing entitlement to finance additional investments or for investment purposes.
- In accordance with article 11 (2), article 28 (1) b) of the Law of 20 December 2002 relating to Undertakings for Collective Investment (as amended) – (“the Law”), a UCITS may borrow up to 10% of its NAV on a temporary basis (i.e. on a non revolving basis) to meet redemptions.
- A UCITS may borrow up to 10 % of its NAV on a temporary basis (i.e. on a non revolving basis) to anticipate subscriptions of units or shares provided that the subscriber is obliged to pay within a reasonable delay (2 to 3 days) and that his commitment is written and definite.
- As regards the calculation of the maximum 10 % limit foreseen in article 50 (2) a) of the Law, the positions of the current accounts held by the UCITS with the same legal counterparty may be netted, which means that debit and credit positions of the UCITS’ current accounts - what ever the currency - held with the same legal counterparty may be netted in the Fund currency provided that the following conditions are fulfilled:
 - 1) such current accounts of the UCITS must be free of any legal charge; current accounts held with any legal counterparties for collateral purposes (for example margin accounts) cannot be included,
 - 2) the legal agreements signed between the UCITS and the legal counterparty which govern the current accounts must permit such netting and
 - 3) the law the legal agreements refer to, must also permit the said netting.

Netting of debit and credit positions of the current accounts of the UCITS held with different legal counterparties is not permitted.
- The management of the UCITS is responsible to ensure that any borrowing remains temporary in the sense that it has to be reimbursed within a reasonable delay taking into account the conditions under which it has been granted.

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