UCITS

Undertakings for Collective Investment in Transferable Securities

LUXEMBOURG
STOCK EXCHANGE

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INTRODUCTION

Eager to respond to the needs of professionals in the financial centre, the Luxembourg Stock Exchange in cooperation with the Association of the Luxembourg Fund Industry (ALFI) proposes two new electronic compilations of texts in French, English and German.

This compilation is dedicated to undertakings for collective investment in transferable securities (UCITS) established under Luxembourg law and contains the amended Law of 17 December 2010 on undertakings for collective investment as well as the main regulatory texts relating thereto.

A second compilation is dedicated to alternative investment funds (AIFs) established under Luxembourg law and to other investment vehicles which are not UCITS and which may not qualify as AIFs. It contains the amended Law of 12 July 2013 on alternative investment fund managers, the amended Law of 17 December 2010 on undertakings for collective investment, the law of 23 July 2016 on reserved alternative investment funds, the amended Law of 13 February 2007 on specialised investment funds, the amended Law of 15 June 2004 on the investment company in risk capital (SICAR) as well as the main regulatory texts relating thereto.

It should be noted that certain texts included in this compilation continue to refer to the repealed Laws of 20 December 2002 and 30 March 1988 concerning undertakings for collective investment. The references to these laws should be understood as references applying to the amended Law of 17 December 2010.

These two compilations of texts are the fruit of an active cooperation between two reputable local law firms, Arendt & Medernach and Elvinger Hoss Prussen, who have compiled the legal and regulatory texts and prepared the English and German translations.

The Luxembourg Stock Exchange and ALFI welcome this cooperation which enables the financial sector to be provided with updated reference texts. These documents contribute to the continued growth of the undertakings for collective investment, alternative investment funds and other investment vehicle sectors in Luxembourg.

Both the Luxembourg Stock Exchange and ALFI extend their gratitude to all those who have contributed to the release of these updated compilations.

Luxembourg, September 2017

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1.

AMENDED LAW OF 17 DECEMBER 2010 CONCERNING UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CONSOLIDATED VERSION AS OF 1 AUGUST 2016

AMENDED LAW OF 17 DECEMBER 2010 CONCERNING UNDERTAKINGS FOR COLLECTIVE INVESTMENT

INTRODUCTORY PART:

DEFINITIONS

Art. 1

For the purposes of this Law:

1. "competent authorities" means the authorities which each Member State designates under Article 97 of Directive 2009/65/EC. The competent authority in Luxembourg which is responsible for the supervision of undertakings for collective investment and management companies is the CSSF;

2. "depositary" means a credit institution entrusted with the duties as set out in Articles 17, 18, 33 and 34 for Luxembourg UCIs;

3. "initial capital" means the funds as referred to in Article 57, items a) and b) of Directive 2006/48/EC;

4. "CSSF" means the *Commission de Surveillance du Secteur Financier* (the Commission for the Supervision of the Financial Sector);

5. "Directive 78/660/EEC" means Council Directive 78/660/EEC of 25 July 1978 based on Article 54, paragraph 3 under g) of the Treaty on the annual accounts of certain types of companies, as amended;

6. "Directive 83/349/EEC" means Council Directive 83/349/EEC of 13 June 1983 based on Article 54, paragraph 3 under g) of the Treaty on consolidated accounts, as amended;

7. "Directive 97/9/EC" means Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes;

7*bis*. "Directive 98/26/EC" means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;

8. "Directive 2004/39/EC" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

9. "Directive 2006/48/EC" means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

10. "Directive 2006/49/EC" means Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions;

10*bis*. "Directive 2006/73/EC" means Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

11. "Directive 2009/65/EC" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

11*bis*. "Directive 2011/61/EU" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010;

11*ter*. "Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

11*quater*. "Directive 2014/65/EU" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

11*quinquies*. "Directive 2014/91/EU" means Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions;

12. "parent undertaking" means an undertaking which owns the following rights:

a) it has the majority of shareholders' or members' voting rights of another undertaking, or

b) it has the right to appoint or remove the majority of the members of the administrative, management or supervisory board of another undertaking and is at the same time a shareholder or member of that undertaking, or

c) it has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its articles of association where the law governing that undertaking allows it to be subject to such contracts or provisions, or

d) it is a shareholder or member of an undertaking and controls alone, pursuant to an agreement entered into with other shareholders or members of this undertaking, the majority of the voting rights of the shareholders and members of the latter, or

e) it may exercise or effectively exercises a dominant influence over another undertaking, or

f) it is placed under management on a unified basis with another undertaking;

13. "Member State" means a Member State of the European Union. The States that are contracting parties to the Agreement creating the European Economic Area other than the Member States of the European Union, within the limits set forth by this Agreement and related acts, are considered as equivalent to Member States of the European Union;

14. "UCITS host Member State" means a Member State other than the UCITS home Member State, in which the units of the common fund or the investment company are marketed;

15. "UCITS home Member State" means the Member State in which the common fund or the investment company is authorised pursuant to Article 5 of Directive 2009/65/EC;

16. "management company's host Member State" means a Member State other than the home Member State, within the territory of which a management company has a branch or provides services;

17. "management company's home Member State" means the Member State in which the management company has its registered office;

18. "subsidiary" means a subsidiary undertaking in respect of which rights are owned as set out in point 12. A subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

18*bis*. "alternative investment funds (AIF)" means undertakings for collective investment, including investment compartments thereof, as referred to in point a) of paragraph 1 of Article 4 of Directive 2011/61/EU, which:

a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC.

In Luxembourg, this means alternative investment funds within the meaning of paragraph 39 of Article 1 of the Law of 12 July 2013 relating to alternative investment fund managers;

19. "own funds" means own funds as defined in Title V, chapter 2, section 1 of Directive 2006/48/EC. For the purposes of this definition, Articles 13 to 16 of Directive 2006/49/EC shall apply *mutatis mutandis*;

20. "merger" means an operation whereby:

a) one or more UCITS or investment compartments thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, the "receiving UCITS", in exchange for the issue to their unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units,

b) two or more UCITS or investment compartments thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof, the "receiving UCITS", in exchange for the issue to their unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units,

c) one or more UCITS or investment compartments thereof, the "merging UCITS", which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof, the "receiving UCITS";

21. "cross-border merger" means a merger of UCITS:

a) at least two of which are established in different Member States, or

b) established in the same Member State into a newly constituted UCITS established in another Member State;

22. "domestic merger" means a merger between UCITS established in the same Member State where at least one of the involved UCITS has been notified pursuant to Article 93 of Directive 2009/65/EC;

22*bis*. "managing AIFs" means performing at least the investment management functions referred to in point 1a) or b) of Annex I of Directive 2011/61/EU for one or more AIFs;

22*ter*. "Alternative Investment Fund Managers (AIFMs)" means legal persons whose regular business is managing one or more AIFs as defined in paragraph 1, point a) of Article 4 of Directive 2011/61/EU. In Luxembourg, this means AIFMs within the meaning of Article 1, paragraph 46 of the Law of 12 July 2013 relating to alternative investment fund managers;

23. "money market instruments" means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time;

23*bis*. "financial instrument" means a financial instrument specified in section C of Annex I of Directive 2014/65/EU;

24. "close links" means a situation in which two or more natural or legal persons are linked by either:

a) "participation", which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or

b) "control", which means the relationship between a "parent undertaking" and a "subsidiary", as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54, paragraph 3, point g), of the Treaty on consolidated accounts and in all the cases referred to in Article 1 paragraphs 1 and 2 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking.

For the purposes of point b), the following provisions apply:

- a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

- situations in which two or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a close link between such persons;

24*bis*. "Law of 12 July 2013 relating to alternative investment fund managers" means the Law of 12 July 2013 relating to alternative investment fund managers transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010;

25. "UCI" means undertaking for collective investment;

26. "UCITS" means undertaking for collective investment in transferable securities subject to Directive 2009/65/EC;

26*bis*. "management body" means:

a) as regards public limited companies, the board of directors or the management board, as the case may be,

b) as regards other types of companies, the body that represents, by virtue of the law and of the instruments of incorporation, the management company or the UCITS;

27. "units" means units of an undertaking constituted in accordance with contract law (common fund managed by a management company) and also shares in an undertaking constituted by statute (investment company);

28. "qualifying holding in a management company" means a direct or indirect holding in a management company which represents 10% or more of the capital or of the voting rights, in accordance with Articles 8 and 9 of the Law of 11 January 2008 on transparency requirements and on the conditions governing the aggregation of voting rights under Article 11, paragraphs 4 and 5 of this aforesaid Law, or any other possibility to exercise a significant influence over the management of this company;

29. "third country" means a state other than a Member State;

30. "unitholder" means unitholders in undertakings constituted in accordance with contract law (common fund managed by a management company) and also shareholders in undertakings constituted by statute (investment companies);

31. "SICAV" means investment company with variable capital[1];

32. "branch" means a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised. For the purposes of this definition, all places of business established in the same Member State by a management company with its head office in another Member State shall be regarded as a single branch;

33. "durable medium" means an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

34. "transferable securities" means:

- shares in companies and other securities equivalent to shares in companies ("shares"),
- bonds and other forms of securitised debt ("debt securities"),
- any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange.

For the purposes of this definition, the techniques and instruments referred to in Article 42 do not constitute transferable securities.

PART I: UCITS

Chapter 1 – General provisions and scope

Art. 2

(1) This Part applies to all UCITS established in Luxembourg.

(2) For the purposes of this Law, and subject to Article 3, UCITS means an undertaking

- with the sole object of collective investment in transferable securities and/or in other liquid financial assets referred to in Article 41, paragraph 1, of capital raised from the public and which operate on the principle of risk-spreading, and
- with units which are, at the request of holders, repurchased, directly or indirectly, out of this undertaking's assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to any such repurchase.

(3) Any such undertakings may be constituted in accordance with contract law (common funds managed by management companies) or by statute (investment companies).

(4) Investment companies whose assets are invested through the intermediary of subsidiary companies, mainly in other assets than in transferable securities or in other liquid financial assets referred to in Article 41, paragraph 1 shall not, however, be subject to this Part.

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[1] *société d'investissement à capital variable*

(5) UCITS which are subject to this Part are prohibited from transforming themselves into investment undertakings which are not subject to Directive 2009/65/EC.

Art. 3

The following are not subject to this Part:

- UCITS of the closed-ended type,
- UCITS which raise capital without promoting the sale of their units to the public within the European Union or any part of it,
- UCITS whose units, under their management regulations or instruments of incorporation, may be sold only to the public in countries which are not members of the European Union,
- categories of UCITS determined by the CSSF, for which the rules laid down in Chapter 5 are inappropriate in view of their investment and borrowing policies.

Art. 4

A UCITS is deemed to be established in Luxembourg if it is authorised in accordance with Article 129.

Chapter 2 – Common funds in transferable securities

Art. 5

For the purposes of this Part, any undivided collection of transferable securities and/or other liquid financial assets referred to in Article 41, paragraph 1 shall be regarded as a common fund if it is made up and managed according to the principle of risk spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units intended for placement with the public by means of a public or private offer.

Art. 6

A common fund shall not be liable for the obligations of the management company or of the unitholders; it shall be answerable only for the obligations and expenses expressly imposed upon it by its management regulations.

Art. 7

The management of a common fund shall be carried out by a management company referred to in Part IV, Chapter 15.

Art. 8

(1) The management company shall issue registered, bearer or dematerialised securities, representing one or more portions of the common fund which it manages. The management company may issue, in accordance with the conditions laid down in the management regulations, written certificates of entry in the register of units or fractions of units without limitation as to the fractioning of units.

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for possible voting rights which can only be exercised for whole units. The bearer securities shall be signed by the management company and by the depositary referred to in Article 17.

These signatures may be reproduced mechanically.

(2) Ownership of units, in the form of registered or bearer securities, shall be determined and transfer thereof shall be effected in accordance with the rules laid down in Articles 40 and 42 of the Law of 10 August 1915 concerning commercial companies, as amended. The rights of units inscribed in a securities account shall be determined and transfer thereof shall be effected in accordance with the rules laid down in the law on dematerialised securities and the Law of 1 August 2001 concerning the circulation of securities.

(3) The owners of bearer securities may, at any moment, demand the conversion of bearer securities, at their own expense, into registered securities or, if the articles of incorporation[2] provide for this, into dematerialised securities. In the latter case, the costs are borne by the person provided for in the law on dematerialised securities.

Unless a formal prohibition is stated in the articles of incorporation[3], the owners of registered securities may, at any moment, demand the conversion of registered securities into bearer securities.

If the articles of incorporation[4] provide for this, the owners of registered securities may demand the conversion of registered securities into dematerialised securities. The costs are borne by the person provided for in the law on dematerialised securities.

The holders of dematerialised securities may, at any moment, demand the conversion, at their own expense, of dematerialised securities into registered securities, unless the management regulations provide for the compulsory dematerialisation of securities.

Art. 9

(1) Units shall be issued at a price obtained by dividing the net asset value of the common fund by the number of units outstanding; this price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

(2) Units may not be issued unless the equivalent of the net issue price is paid into the assets of the common fund within the usual time limits. This provision shall not preclude the distribution of bonus units.

(3) Unless otherwise provided for in the management regulations of the fund, the valuation of the assets of the fund shall be based, in the case of securities admitted to official listing on a stock exchange, on the last known stock exchange quotation, unless this quotation is not representative. For securities not so admitted on such a stock exchange and for securities which are so admitted on such a stock exchange, but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value, estimated with care and in good faith.

Art. 10

The purchase and sale of the assets may only be effected at prices conforming to the valuation criteria laid down in paragraph 3 of Article 9.

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2 The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

3 The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

4 The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

Art. 11

(1) Neither the holders of the units nor their creditors may require the distribution or the dissolution of the common fund.

(2) A common fund must repurchase its units at the request of a unitholder.

(3) The repurchase of units shall be effected on the basis of the value calculated in accordance with Article 9, paragraph 1, after deduction of any applicable expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

Art. 12

(1) By way of derogation from Article 11, paragraph 2:

a) the management company may, in the cases and according to the procedures provided for by the management regulations, temporarily suspend the repurchase of units. Suspension may be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unitholders;

b) the CSSF may in the interests of the unitholders or of the public require the suspension of the repurchase of units, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the common fund are not observed.

(2) In the cases referred to in paragraph 1, point a), the management company must, without delay, communicate its decision to the CSSF and, if the units of the fund are marketed in other Member States of the European Union, to the competent authorities of those Member States.

(3) The issue and repurchase of units shall be prohibited:

a) during any period where there is no management company or depositary;

b) where the management company or the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors, a suspension of payment or a controlled management or is the subject of similar proceedings.

Art. 13

(1) The management company shall draw up the management regulations for the common fund. These management regulations must be lodged with the register of commerce and companies and their publication in the *Recueil électronique des sociétés et associations*[5] will be made by way of a notice advising of the deposit of the document, in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. The provisions of these management regulations shall be deemed accepted by the unitholders by the mere fact of the acquisition of these units.

(2) The management regulations of the common fund are subject to Luxembourg law and must contain at least the following provisions:

a) the name and duration of the common fund, the name of the management company and of the depositary,

[5] The *Recueil électronique des sociétés et associations* is the central electronic platform of official publication.

b) the investment policy according to its specific objectives and the criteria therefore,

c) the distribution policy within the scope of Article 16,

d) the remuneration and expenditure which the management company is entitled to charge to the common fund and the method of calculation of that remuneration,

e) the provisions as to publication,

f) the date of the closing of the accounts of the common fund,

g) the cases where, without prejudice to legal grounds, the common fund shall be dissolved,

h) the procedures for amendment of the management regulations,

i) the procedure for the issue of units,

j) the procedure for the repurchase of units and the conditions under which the repurchases are carried out and may be suspended.

Art. 14

(1) The management company shall manage the common fund in accordance with the management regulations and in the exclusive interests of the unitholders.

(2) It shall act in its own name, but shall indicate that it is acting on behalf of the common fund.

(3) It shall exercise all the rights attaching to the securities comprised in the portfolio of the common fund.

Art. 15

The management company must fulfil its obligations with the diligence of a salaried agent; it shall be liable to the unitholders for any loss resulting from the non-fulfilment or improper fulfilment of its obligations.

Art. 16

Unless otherwise provided for in the management regulations, the net assets of the common fund may be distributed subject to the limits set out in Article 23.

Art. 17

(1) For each of the common funds it manages, a management company shall ensure that a single depositary is appointed in accordance with the provisions of this Article and of Articles 18 to 22.

(2) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State.

(3) The depositary must be a credit institution within the meaning of the amended Law of 5 April 1993 on the financial sector.

(4) (…)[6]

[6] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

(5) The directors[7] of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of common fund concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(5*bis*) The appointment of the depositary shall be evidenced by a written contract. This contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the common fund for which it has been appointed as depositary, as laid down in this Law and in other applicable laws, regulations and administrative provisions.

(6) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its missions and which is necessary to enable the CSSF to fulfil its monitoring mission.

Where the management of the common fund is performed by a management company established in another Member State, the CSSF shall, without delay, communicate the information received to the competent authorities of the home Member State of the management company.

Art. 18

(1) (…)[8]

(2) The depositary must:

a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the common fund are carried out in accordance with the law and the management regulations,

b) ensure that the value of the units of the common fund is calculated in accordance with the law and the management regulations,

c) carry out the instructions of the management company, unless they conflict with the law or the management regulations,

d) ensure that in transactions involving the common fund's assets, any consideration is remitted to it within the usual time limits,

e) ensure that the common fund's income is applied in accordance with the law or the management regulations.

(3) The depositary shall ensure that the cash flows of the common fund are properly monitored and, in particular, that all payments made by, or on behalf of, unitholders of the common fund upon the subscription of units of the common fund have been received and that all cash of the common fund has been booked in cash accounts that are:

a) opened in the name of the common fund, of the management company acting on behalf of the common fund or of the depositary acting on behalf of the common fund;

b) opened at an entity referred to in points a), b) and c) of Article 18, paragraph 1 of Directive 2006/73/EC; and

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7 *dirigeants*

8 Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the common fund, no cash of the entity referred to in point b) of the first sub-paragraph and none of the own cash of the depositary shall be booked on such accounts.

(4) The assets of the common fund shall be entrusted to the depositary for safekeeping as follows:

a) for financial instruments that may be held in custody, the depositary shall:

i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts, in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the management company acting on behalf of the common fund, so that they can be clearly identified as belonging to the common fund in accordance with the applicable law at all times;

b) for the other assets, the depositary shall:

i) verify the ownership by the common fund of these assets by assessing whether the common fund holds the ownership based on information or documents provided by the management company acting on behalf of the common fund and, where available, on external evidence;

ii) maintain a record of those assets for which it is satisfied that the common fund holds the ownership and keep that record up to date.

(5) The depositary shall provide the management company, on a regular basis, with a comprehensive inventory of all the assets of the common fund.

(6) The assets of the common fund held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets of the common fund held in custody by the depositary are allowed to be reused only where:

a) the reuse of the assets is executed for the account of the common fund;

b) the depositary is carrying out the instructions of the management company on behalf of the common fund;

c) the reuse is for the benefit of the common fund and in the interest of the unitholders; and

d) the transaction is covered by high-quality and liquid collateral received by the common fund under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

(7) In case of insolvency of the depositary and/or of any third party located in Luxembourg to which custody of the assets of the common fund has been delegated, the assets held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.

Art. 18*bis*

(1) The depositary shall not delegate to third parties the functions referred to in paragraphs 2 and 3 of Article 18.

(2) The depositary may delegate to third parties the functions referred to in paragraph 4 of Article 18 only where:

a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Law;

b) the depositary can demonstrate that there is an objective reason for the delegation;

c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(3) The functions referred to in paragraph 4 of Article 18 may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it:

a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the common fund which have been entrusted to it;

b) for custody tasks referred to in point a) of paragraph 4 of Article 18, is subject to:

i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;

ii) an external periodic audit to ensure that the financial instruments are in its possession;

c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to the clients of a particular depositary;

d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a common fund held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and

e) complies with the general obligations and prohibitions laid down in paragraph 5*bis* of Article 17, in paragraphs 4 and 6 of Article 18 and in Article 20.

Notwithstanding sub-paragraph 1, point b) i), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:

a) the unitholders investing in the relevant common fund are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;

b) the management company on behalf of the common fund has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, paragraph 2 of Article 19 shall apply *mutatis mutandis* to the relevant parties.

(4) For the purposes of this Article, the provision of services as specified in Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

Art. 19

(1) The depositary shall be liable, to the common fund and to the unitholders of the common fund, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point a) of paragraph 4 of Article 18 has been delegated.

In the case of a loss of a financial instrument held in custody, the depositary shall return a financial instrument of an identical type or the corresponding amount to the management company acting on behalf of the common fund without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The depositary is also liable to the common fund and to the unitholders for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this Law.

(2) The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation referred to in Article 18*bis*.

(3) The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.

(4) Any agreement that contravenes paragraph 3 shall be void.

(5) Unitholders of the common fund may invoke the liability of the depositary directly or indirectly through the management company, provided that this does not lead to a duplication of redress or to unequal treatment of the unitholders.

Art. 20

(1) No company shall act as both management company and depositary.

(2) In carrying out their respective functions, the management company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the common fund and the unitholders.

A depositary shall not carry out activities with regard to the common fund or the management company on behalf of the common fund that may create conflicts of interest between the common fund, the unitholders, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the common fund.

Art. 21

The duties of the management company or of the depositary in respect of the common fund shall cease:

a) in the case of withdrawal of the management company, provided that it is replaced by another management company authorised in accordance with Directive 2009/65/EC;

b) in the case of voluntary withdrawal of the depositary or of its removal by the management company; until the replacement of the depositary, which must happen within two months, the depositary must take all necessary steps for the good preservation of the interests of the unitholders;

c) where the management company or the depositary has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management, or has been the subject of similar proceedings or has been put into liquidation;

d) where the authorisation of the management company or the depositary has been withdrawn by the competent authority;

e) in all other cases provided for in the management regulations.

Art. 22

(1) Liquidation of the common fund shall take place:

a) upon the expiry of any period as may be fixed by the management regulations;

b) in the event of cessation of their duties by the management company or by the depositary in accordance with Article 21, points b), c), d) and e), if they have not been replaced within two months without prejudice to the specific circumstance addressed in point c) below;

c) in the event of bankruptcy of the management company;

d) if the net assets of the common fund have fallen for more than 6 months below one quarter of the legal minimum provided for in Article 23 hereafter;

e) in all other cases provided for in the management regulations.

(2) Notice of the event giving rise to liquidation shall be lodged without delay by the management company or the depositary in the file of the common fund with the register of commerce and companies and published in the *Recueil électronique des sociétés et associations,* in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper. Failing this, the deposit and the publication will be arranged by the CSSF at the expense of the common fund.

(3) As soon as the event giving rise to liquidation of the common fund occurs, the issue of units shall be prohibited, on penalty of nullity. The repurchase of units remains possible provided the equal treatment of unitholders can be ensured.

Art. 23

The net assets of a common fund may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000).

This minimum must be reached within a period of six months following the authorisation of the common fund.

A CSSF regulation may increase this minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

Art. 24

The management company must inform the CSSF without delay if the net assets of the common fund have fallen below two thirds of the legal minimum. In a case where the net assets of the common fund have fallen below two thirds of the legal minimum, the CSSF may, having regard to the circumstances, compel the management company to put the common fund into liquidation.

The order addressed to the management company by the CSSF to put a common fund into liquidation shall be lodged without delay with the register of commerce and companies in the file of the common fund and published by the management company or the depositary in the *Recueil électronique des sociétés et associations,* in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper. Failing this, the deposit and the publication will be arranged by the CSSF at the expense of the common fund.

Chapter 3 – SICAVs in transferable securities

Art. 25

For the purposes of this Part, SICAVs shall be taken to mean those companies which have adopted the form of a public limited company[9] governed by Luxembourg law,

- whose sole object is to invest their funds in transferable securities and/or other liquid financial assets referred to in Article 41, paragraph 1 in order to spread the investment risks and to ensure for their unitholders the benefit of the result of the management of their assets, and

- whose units are intended to be placed with the public by means of a public or private offer, and

- whose articles of incorporation provide that the amount of the capital shall at all times be equal to the net asset value of the company.

Art. 26

(1) SICAVs shall be subject to the provisions applicable in general to public limited companies, insofar as this Law does not derogate therefrom.

(2) The articles of incorporation of a SICAV and any amendment thereto shall be recorded in a special notarial deed drawn up in French, German or English as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, when this deed is in English, the requirement to attach a translation into an official language to that deed, when it is filed with the registration authorities, does not apply. This requirement does not apply either to other deeds which must be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of a SICAV or of a merger proposal concerning a SICAV.

(3) By derogation to Article 73, sub-paragraph 2 of the Law of 10 August 1915 on commercial companies, as amended, SICAVs are not required to send the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board to the registered unitholders at the same time

9 *société anonyme*

as the convening notice to the annual general meeting. The convening notice shall indicate the place and the practical arrangements for providing these documents to the unitholders and shall specify that each unitholder may request that the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board are sent to him.

(4) The convening notices to general meetings of unitholders may provide that the quorum and the majority at the general meeting shall be determined according to the units issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The rights of a unitholder to attend a general meeting and to exercise a voting right attaching to his units are determined in accordance with the units held by this unitholder at the Record Date.

Art. 27

(1) The minimum capital of a SICAV which has not designated a management company may not be less than three hundred thousand euros (EUR 300,000) at the time of authorisation. The capital of any SICAV including SICAVs which have designated a management company must reach one million two hundred and fifty thousand euros (EUR 1,250,000) within a period of 6 months following the authorisation of the SICAV. A CSSF regulation may raise those minimum amounts up to a respective maximum of six hundred thousand euros (EUR 600,000) and two million five hundred thousand euros (EUR 2,500,000).

In addition, where a SICAV has not designated a management company authorised pursuant to Directive 2009/65/EC:

- the application for authorisation must be accompanied by a programme of operations setting out, at least, the organisational structure of the SICAV;

- the directors of the SICAV shall be of sufficiently good repute and be sufficiently experienced in relation to the type of business carried out by that company. To that end, the name of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF. The conduct of a SICAV's business must be decided by at least two persons meeting these conditions. "Directors" shall mean those persons who, under law or the instruments of incorporation represent the SICAV or who effectively determine the policy of the company;

- moreover, where close links exist between the SICAV and other natural or legal persons, the CSSF shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

The CSSF shall also refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the SICAV has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

SICAVs shall communicate to the CSSF the information it requires.

The applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

A SICAV may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the SICAV, the granting of authorisation implies an obligation to notify the CSSF, spontaneously, in writing and in a complete, coherent and comprehensible manner, of any change regarding substantial information upon which the CSSF based itself to examine the application for authorisation.

The CSSF may withdraw the authorisation issued to a SICAV subject to this part of the Law only where that company:

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Law for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) has seriously and/or systematically infringed the provisions of this Law or of the regulations adopted pursuant thereto;

e) falls within any of the cases where this Law provides for withdrawal.

(2) Articles 110, 111, 111*bis*, 111*ter* and 112 shall apply to SICAVs that have not designated a management company authorised pursuant to Directive 2009/65/EC, provided that the words "management company" shall be construed as "SICAV".

SICAVs may only manage assets of their own portfolio and may not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

(3) SICAVs that have not designated a management company authorised pursuant to Directive 2009/65/EC shall at all times observe applicable prudential rules.

In particular, the CSSF, having regard also to the nature of the SICAV, shall require that the company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital and ensuring, *inter alia*, that each transaction involving the company may be reconstructed according to its origin, the parties concerned, its nature, and the time when and the place at which it was effected and that the assets of the SICAV are invested according to the instruments of incorporation and the legal provisions in force.

Art. 28

(1) a) Subject to any contrary provisions of its articles of incorporation, the SICAV may issue its units at any time.

b) The SICAV must repurchase its units at the request of the unitholder without prejudice to paragraphs 5 and 6 of this Article.

(2) a) The units shall be issued at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

b) The units shall be redeemed at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be decreased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

(3) Units of a SICAV may not be issued unless the equivalent of the net issue price is paid into the assets of the SICAV within the usual time limits. This provision shall not preclude the distribution of bonus units.

(4) The articles of incorporation shall determine the time limits for payments in respect of issues and repurchase and shall specify the principles and methods of valuation of the assets of the SICAV. Unless otherwise provided for in the articles of incorporation, the valuation of the assets of the SICAV shall be based, in the case of securities admitted to official listing on a stock exchange, on the last known stock exchange quotation, unless that quotation is not representative. For securities not so admitted on such a stock exchange and for securities which are admitted on such a stock exchange but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value which must be estimated with care and in good faith.

(5) By way of derogation from paragraph 1, the articles of incorporation shall specify the conditions in which issues and repurchases may be suspended, without prejudice to legal causes. In the event of suspension of issues or repurchases, the SICAV must inform the CSSF without delay and, if it markets its units in other Member States of the European Union, the competent authorities of those states.

In the interests of the unitholders, repurchases may be suspended by the CSSF if the provisions of the laws, regulations or the articles of incorporation concerning the activity and operation of the SICAV are not observed.

(6) The articles of incorporation shall determine the frequency of the calculation of the issue and repurchase price.

(7) The articles of incorporation shall specify the nature of the expenses to be borne by the SICAV.

(8) The units must be fully paid up. They shall have no par value.

(9) A unit shall specify the minimum amount of capital and shall give no indication regarding its par value or the portion of the capital which it represents.

(10) The purchase and sale of assets must be effected at prices conforming to the valuation criteria of paragraph 4.

Art. 29

(1) Variations in the capital shall be effected *ipso jure* and without compliance with measures regarding publication and entry in the register of commerce and companies prescribed for increases and decreases of capital of public limited companies.

(2) Reimbursement to unitholders following a reduction of capital shall not be subject to any restriction other than that provided for in Article 31, paragraph 1.

(3) In the case of issue of new units, pre-emptive rights may not be claimed by existing unitholders unless those rights are expressly provided for in the articles of incorporation.

Art. 30

(1) If the capital of the SICAV falls below two thirds of the minimum capital, the directors or the management board, as the case may be, must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed and which shall decide by a simple majority of the units represented at the meeting.

(2) If the capital of the SICAV falls below one quarter of the minimum capital, the directors or the management board, as the case may be, must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed; dissolution may be resolved by unitholders holding one quarter of the units at the meeting.

(3) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the net assets have fallen below two thirds or one quarter of the minimum capital, as the case may be.

Art. 31

(1) Unless otherwise provided for in the articles of incorporation, the net assets of the SICAV may be distributed subject to the limits set out in Article 27.

(2) SICAVs shall not be obliged to create a legal reserve.

(3) SICAVs are not subject to the provisions in respect of payment of interim dividends as set out in Article 72-2 of the Law of 10 August 1915 on commercial companies, as amended.

Art. 32

For companies to which this Chapter applies, the words "public limited company" or "European company (SE)" shall be replaced by the words "investment company with variable capital" or the letters "SICAV", or by the words "European investment company with variable capital"[10] or "SICAV-SE".

Art. 33

(1) SICAVs shall ensure that a single depositary is appointed in accordance with the provisions of this Article and of Articles 34 to 37.

(2) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State.

(3) The depositary must be a credit institution within the meaning of the amended Law of 5 April 1993 on the financial sector.

(4) The directors of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of SICAV concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(5) The appointment of the depositary shall be evidenced by a written contract. This contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the SICAV for which it has been appointed as depositary, as laid down in this Law and in other relevant laws, regulations and administrative provisions.

(6) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its missions and which is necessary to enable the CSSF to fulfil its monitoring mission.

In the case of a SICAV having designated a management company whose home Member State is not the same as that of the SICAV, the CSSF shall, without delay, communicate the information received to the competent authorities of the home Member State of the management company.

[10] *société européenne d'investissement à capital variable*

Art. 34

(1) The depositary must:

a) ensure that the sale, issue, repurchase, redemption and cancellation of shares of the SICAV are carried out in accordance with the law and the articles of incorporation of the SICAV;

b) ensure that the value of the shares of the SICAV is calculated in accordance with the law and the articles of incorporation of the SICAV;

c) carry out the instructions of the SICAV or of the management company acting on behalf of the SICAV, unless they conflict with the law or the articles of incorporation of the SICAV;

d) ensure that in transactions involving the assets of the SICAV any consideration is remitted to it within the usual time limits;

e) ensure that the income of the SICAV is applied in accordance with the law or the articles of incorporation.

(2) The depositary shall ensure that the cash flows of the SICAV are properly monitored and, in particular, that all payments made by, or on behalf of, unitholders upon the subscription of shares of the SICAV have been received and that all cash of the SICAV has been booked in cash accounts that are:

a) opened in the name of the SICAV or of the depositary acting on behalf of the SICAV;

b) opened at an entity referred to in points a), b) and c) of Article 18, paragraph 1, of Directive 2006/73/EC; and

c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the SICAV, no cash of the entity referred to in point b) of the first sub-paragraph and none of the own cash of the depositary shall be booked on such accounts.

(3) The assets of the SICAV shall be entrusted to the depositary for safekeeping as follows:

a) for financial instruments that may be held in custody, the depositary shall:

i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts, in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the SICAV, so that they can be clearly identified as belonging to the SICAV in accordance with the applicable law at all times;

b) for the other assets, the depositary shall:

i) verify the ownership by the SICAV of such assets by assessing whether the SICAV holds the ownership based on information or documents provided by the SICAV and, where available, on external evidence;

ii) maintain a record of those assets for which it is satisfied that the SICAV holds the ownership and keep that record up to date.

(4) The depositary shall provide the SICAV, on a regular basis, with a comprehensive inventory of all the assets of the SICAV.

(5) The assets of the SICAV held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets of the SICAV held in custody by the depositary are allowed to be reused only where:

a) the reuse of the assets is executed for the account of the SICAV;

b) the depositary is carrying out the instructions of the SICAV or of the management company on behalf of the SICAV;

c) the reuse is for the benefit of the SICAV and in the interest of the unitholders; and

d) the transaction is covered by high-quality and liquid collateral received by the SICAV under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

(6) In case of insolvency of the depositary and/or of any third party located in Luxembourg to which custody of the assets of the SICAV has been delegated, the assets held in custody shall be unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.

Art. 34*bis*

(1) The depositary shall not delegate to third parties the functions referred to in paragraphs 1 and 2 of Article 34.

(2) The depositary may delegate to third parties the functions referred to in paragraph 3 of Article 34 only where:

a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Law;

b) the depositary can demonstrate that there is an objective reason for the delegation;

c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(3) The functions referred to in paragraph 3 of Article 34 may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it:

a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the SICAV which have been entrusted to it;

b) for custody tasks referred to in point a) of paragraph 3 of Article 34, is subject to:

i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;

ii) an external periodic audit to ensure that the financial instruments are in its possession;

c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to the clients of a particular depositary;

d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of the SICAV held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and

e) complies with the general obligations and prohibitions laid down in paragraph 5 of Article 33, in paragraphs 3 and 5 of Article 34 and in Article 37.

Notwithstanding sub-paragraph 1, point b) i), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:

a) the unitholders investing in the relevant SICAV are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;

b) the SICAV has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, paragraph 2 of Article 35 shall apply *mutatis mutandis* to the relevant parties.

(4) For the purposes of this Article, the provision of services as specified in Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

Art. 35

(1) The depositary shall be liable, to the SICAV and to the unitholders, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point a) of paragraph 3 of Article 34 has been delegated.

In the case of a loss of a financial instrument held in custody, the depositary must return a financial instrument of an identical type or the corresponding amount to the SICAV without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The depositary is also liable to the SICAV and to the unitholders for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this Law.

(2) The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation referred to in Article 34*bis*.

(3) The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.

(4) Any agreement that contravenes paragraph 3 shall be void.

(5) Unitholders may invoke the liability of the depositary directly or indirectly through the SICAV provided that this does not lead to a duplication of redress or to unequal treatment of the unitholders.

Art. 36

The duties of the depositary or of the management company in the case of a SICAV having designated a management company, shall cease, respectively, regarding the SICAV:

a) in the case of voluntary withdrawal of the depositary or of its removal by the SICAV; until the replacement of the depositary, which must happen within two months, the depositary must take all necessary steps for the good preservation of the interests of the unitholders;

b) in the case of voluntary withdrawal of the designated management company or of its removal by the SICAV, provided that it is replaced by another management company authorised in accordance with Directive 2009/65/EC;

c) in the case of withdrawal of the designated management company by the SICAV, the SICAV having decided to adopt the status of a self-managed SICAV;

d) where the SICAV, the depositary or the designated management company has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management or has been the subject of similar proceedings, or has been put into liquidation;

e) where the authorisation of the SICAV, the depositary or the designated management company has been withdrawn by the competent authority;

f) in all other cases provided for in the articles of incorporation.

Art. 37

(1) No company shall act as both SICAV and depositary. No company shall act as both management company and depositary.

(2) In carrying out their respective functions, the SICAV, the management company acting on behalf of the SICAV and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the SICAV and the unitholders.

A depositary shall not carry out activities with regard to the SICAV or the management company on behalf of the SICAV that may create conflicts of interest between the SICAV, the unitholders, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the SICAV.

Chapter 4 – Other investment companies in transferable securities

Art. 38

For the purposes of this Part I, other investment companies shall be taken to mean companies other than SICAVs and

- whose sole object is to invest their funds in transferable securities and/or other liquid financial assets referred to in Article 41, paragraph 1 in order to spread the investment risks and to

ensure for their unitholders the benefit of the results of the management of their assets, and

- whose units are intended to be placed with the public by means of a public or private offer provided that the words "investment company" appear on all their deeds, announcements, publications, letters and other documents.

Art. 39

Articles 26, 27, 28 with the exception of paragraphs 8 and 9, 30, 33, 34, 34*bis*, 35, 36 and 37 are applicable to investment companies falling within the scope of this Chapter.

Chapter 5 – Investment policy of UCITS

Art. 40

Where a UCITS comprises more than one investment compartment, each compartment shall be regarded as a separate UCITS for the purposes of this Chapter.

Art. 41

(1) The investments of a UCITS must comprise only one or more of the following:

a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

b) transferable securities and money market instruments dealt in on another market in a Member State which is regulated, operates regularly and is recognised and open to the public;

c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-Member State of the European Union or dealt in on another market in a non-Member State of the European Union which is regulated, operates regularly and is recognised and open to the public provided that the choice of the stock exchange or market has been provided for in the management regulations or the instruments of incorporation of the UCITS;

d) recently issued transferable securities and money market instruments, provided that:

- the terms of issue include an undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of the stock exchange or the market has been provided for in the management regulations or the instruments of incorporation of the UCITS;

- the admission is secured within one year of issue;

e) units of UCITS authorised according to Directive 2009/65/EC and/or other UCIs within the meaning of Article 1, paragraph 2, points a) and b) of Directive 2009/65/EC, whether or not established in a Member State provided that:

- such other UCIs are authorised under laws which provide that they are subject to supervision considered by the CSSF to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured;

- the level of protection for unitholders in the other UCIs is equivalent to that provided for unitholders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable

securities and money market instruments are equivalent to the requirements of Directive 2009/65/EC;

- the business of the other UCIs is reported in half-yearly and annual reports to enable an assessment of the assets and liabilities, income and operations over the reporting period;

- no more than 10% of the assets of the UCITS or of the other UCIs, whose acquisition is contemplated, can, according to their management regulations or instruments of incorporation, be invested in aggregate in units of other UCITS or other UCIs;

f) deposits with a credit institution which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a third country, provided that it is subject to prudential rules considered by the CSSF as equivalent to those laid down in Community law;

g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in points a), b) and c) above or financial derivative instruments dealt in over-the-counter ("OTC derivatives"), provided that

- the underlying consists of instruments covered by Article 41, paragraph 1, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the UCITS management regulations or incorporation of instruments,

- the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the CSSF, and

- the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS initiative;

h) money market instruments other than those dealt in on a regulated market and which fall under Article 1, if the issue or the issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that these investments are:

- issued or guaranteed by a central, regional or local authority or by a central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a third country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong, or

- issued by an undertaking any securities of which are dealt in on regulated markets referred to in points a), b) or c) above, or

- issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by EU law, or by an establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those laid down by Community law; or

- issued by other bodies belonging to the categories approved by the CSSF provided that investments in such instruments are subject to investor protection equivalent to that laid down in the first, the second or the third indent and provided that the issuer is a company whose capital and reserves amount to at least ten million euros (EUR 10,000,000) and which presents and publishes its annual accounts in accordance with the fourth Directive

78/660/EEC, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

(2) A UCITS shall not, however:

a) invest more than 10% of its assets in transferable securities or money market instruments other than those referred to in paragraph 1;

b) acquire either precious metals or certificates representing them.

A UCITS may hold ancillary liquid assets.

(3) An investment company may acquire movable and immovable property which is essential for the direct pursuit of its business.

Art. 42

(1) A management company having its registered office in Luxembourg shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio of a UCITS. In particular, it shall not solely or mechanistically rely on the credit ratings issued by credit rating agencies as defined in Article 3, paragraph 1, point b) of Regulation (EC) No. 1060/2009 of 16 September 2009 on credit rating agencies for assessing the creditworthiness of the UCITS' assets.

It shall employ a process for accurate and independent assessment of the value of OTC derivatives. It shall communicate to the CSSF regularly, in accordance with the detailed rules the latter shall define, with regard to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

An investment company having its registered office in Luxembourg is subject to the same obligation.

(2) A UCITS is also authorised to employ techniques and instruments relating to transferable securities and money market instruments under the conditions and within the limits laid down by the CSSF provided that such techniques and instruments are used for the purpose of efficient portfolio management. When these operations concern the use of derivative instruments, these conditions and limits shall conform to the provisions laid down in this Law.

Under no circumstances shall these operations cause the UCITS to diverge from its investment objectives as laid down in the UCITS management regulations, its instruments of incorporation or prospectus.

(3) A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio.

The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. This shall also apply to the following sub-paragraphs.

A UCITS may invest, as a part of its investment policy and within the limits laid down in Article 43, paragraph 5 in financial derivative instruments, provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 43. When a UCITS invests in index-based financial derivative instruments, those investments are not required to be combined for the purposes of the limits laid down in Article 43.

When a transferable security or a money market instrument embeds a derivative instrument, the derivative instrument shall be taken into account when complying with the requirements of this Article.

(3*bis*) The CSSF shall, taking into account the nature, scale and complexity of the UCITS' activities, monitor the adequacy of the credit assessment processes of the management companies or investment companies having their registered office in Luxembourg, assess the use of references to credit ratings, as referred to in paragraph 1, second sentence, in the UCITS' investment policies and encourage where appropriate mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

Art. 43

(1) A UCITS may invest no more than 10% of its assets in transferable securities or money market instruments issued by the same body. A UCITS may not invest more than 20% of its assets in deposits made with the same body. The risk exposure to a counterparty of the UCITS in an OTC derivative transaction may not exceed 10% of its assets when the counterparty is a credit institution referred to in Article 41, paragraph 1, point f), or 5% of its assets in other cases.

(2) The total value of the transferable securities and money market instruments held by a UCITS in the issuing bodies in each of which it invests more than 5% of its assets shall not exceed 40% of the value of its assets. This limitation does not apply to deposits and OTC derivative transactions made with financial institutions subject to prudential supervision.

Notwithstanding the individual limits laid down in paragraph 1, a UCITS shall not combine, where this would lead to investment of more than 20% of its assets in a single body, any of the following:

- investments in transferable securities or money market instruments issued by that body,

- deposits made with that body, or

- exposures arising from OTC derivative transactions undertaken with that body.

(3) The limit laid down in the first sentence of paragraph 1 may be of a maximum of 35% if the transferable securities or money market instruments are issued or guaranteed by a Member State, by its public local authorities, by a third country or by public international bodies of which one or more Member States belong.

(4) The limit laid down in the first sentence of paragraph 1 may be of a maximum of 25% for certain bonds where they are issued by a credit institution which has its registered office in a Member State and is subject by law, to special public supervision designed to protect bondholders. In particular, sums deriving from the issue of those bonds must be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in case of bankruptcy of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

Where a UCITS invests more than 5% of its assets in the bonds referred to in the first sub-paragraph which are issued by a single issuer, the total value of such investments may not exceed 80% of the value of the assets of the UCITS.

The CSSF shall send to the European Securities and Markets Authority the list of the categories of bonds referred to in the first sub-paragraph and of the categories of issuers authorised, in accordance with the law and the provisions concerning the supervision mentioned in that sub-paragraph, to issue bonds complying with the criteria set out in this Article.

(5) The transferable securities and money market instruments referred to in paragraphs 3 and 4 shall not be taken into account for the purpose of applying the limit of 40% referred to in paragraph 2.

The limits set out in paragraphs 1, 2, 3 and 4 shall not be combined; thus investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with paragraphs 1, 2, 3 and 4 shall not exceed in total 35% of the assets of the UCITS.

Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating the limits contained in this Article.

A UCITS may cumulatively invest up to a limit of 20% of its assets in transferable securities and money market instruments within the same group.

Art. 44

(1) Without prejudice to the limits laid down in Article 48, the limits laid down in Article 43 are raised to a maximum of 20% for investments in shares and/or debt securities issued by the same body when, according to the management regulations or instruments of incorporation of the UCITS, the aim of the UCITS investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the CSSF, on the following basis:

- the composition of the index is sufficiently diversified;
- the index represents an adequate benchmark for the market to which it refers;
- it is published in an appropriate manner.

(2) The limit laid down in paragraph 1 is raised to 35% where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

Art. 45

(1) By way of derogation from Article 43, the CSSF may authorise a UCITS to invest in accordance with the principle of risk-spreading up to 100% of its assets in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a non-Member State of the European Union or public international body to which one or more Member States belong.

The CSSF shall grant such an authorisation only if it considers that unitholders in the UCITS have protection equivalent to that of unitholders of UCITS complying with the limits laid down in Articles 43 and 44.

These UCITS shall hold securities from at least six different issues, but securities from any single issue shall not account for more than 30% of its total assets.

(2) The UCITS referred to in paragraph 1 must make express mention, in their management regulations or instruments of incorporation, of the States, local public authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35% of their assets.

(3) In addition, the UCITS referred to in paragraph 1 must include a prominent statement in their prospectuses or marketing communications, drawing attention to such authorisation and indicating the States, local public authorities and public international bodies in the securities of which they intend to invest or have invested more than 35% of their assets.

Art. 46

(1) A UCITS may acquire the units of UCITS and/or other UCIs referred to in Article 41, paragraph 1, point e), provided that no more than 20% of its assets are invested in the units of a single UCITS or other UCI.

For the purpose of the application of this investment limit, each compartment of a UCI with multiple compartments is to be considered as a separate issuer provided that the principle of segregation of the obligations of the various compartments *vis-à-vis* third parties is ensured.

(2) Investments made in units of UCIs other than UCITS may not in aggregate exceed 30% of the assets of a UCITS.

When a UCITS has acquired units of UCITS and/or other UCIs, the assets of the respective UCITS or other UCIs do not have to be combined for the purposes of the limits laid down in Article 43.

(3) Where a UCITS invests in the units of other UCITS and/or other UCIs that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company may not charge subscription or redemption fees on account of the UCITS investment in the units of such other UCITS and/or other UCIs.

A UCITS that invests a substantial proportion of its assets in other UCITS and/or other UCIs shall disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS and/or other UCIs in which it intends to invest. In its annual report it shall indicate the maximum proportion of management fees charged both to the UCITS itself and to the UCITS and/or other UCIs in which it invests.

Art. 47

(1) The prospectus shall indicate in which categories of assets a UCITS is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised; in this event, it must include a prominent statement indicating if these operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile.

(2) When a UCITS invests principally in any category of assets defined in Article 41 other than transferable securities and money market instruments or replicates a stock or debt securities index in accordance with Article 44, its prospectus and, where necessary, marketing communications must include a prominent statement drawing attention to its investment policy.

(3) When the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, marketing communications must include a prominent statement drawing attention to this characteristic of the UCITS.

(4) Upon request of an investor, the management company must also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main risks and yields of the categories of instruments.

Art. 48

(1) An investment company or a management company acting in connection with all of the common funds which it manages and which fall within the scope of Part I or of Directive 2009/65/EC, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

(2) Moreover, a UCITS may acquire no more than:

- 10% of the non-voting shares of the same issuer;
- 10% of the debt securities of the same issuer;
- 25% of the units of the same UCITS or other UCI within the meaning of Article 2, paragraph 2;
- 10% of the money market instruments of any single issuer.

The limits laid down in the second, third and fourth indents may be disregarded at the time of acquisition if at that time the gross amount of bonds or of the money market instruments, or the net amount of the instruments in issue cannot be calculated.

(3) Paragraphs 1 and 2 are waived as regards:

a) transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;

b) transferable securities and money market instruments issued or guaranteed by a non-Member State of the European Union;

c) transferable securities and money market instruments issued by public international bodies of which one or more Member States of the European Union are members;

d) shares held by UCITS in the capital of a company incorporated in a third country of the European Union which invests its assets mainly in the securities of issuing bodies having their registered office in that State, where under the legislation of that State, such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that State. This derogation, however, shall apply only if in its investment policy the company from the third country of the European Union complies with the limits laid down in Articles 43 and 46 and Article 48, paragraphs 1 and 2. Where the limits set in Articles 43 and 46 are exceeded, Article 49 shall apply *mutatis mutandis*;

e) shares held by one or more investment companies in the capital of subsidiary companies which, carry on the business of management, advice or marketing in the country where the subsidiary is established, in regard to the repurchase of units at the request of unitholders exclusively on its or their behalf.

Art. 49

(1) UCITS need not comply with the limits laid down in this Chapter when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets.

While ensuring observance of the principle of risk-spreading, newly authorised UCITS may derogate from Articles 43, 44, 45 and 46 for six months following the date of their authorisation.

(2) If the limits referred to in paragraph 1 are exceeded for reasons beyond the control of the UCITS or as a result of the exercise of subscription rights, it must adopt as a priority objective

for its sales transactions the remedying of that situation, taking due account of the interests of its unitholders.

Art. 50

(1) Neither may borrow:

- an investment company, nor
- a management company or depositary acting on behalf of a common fund.

However, a UCITS may acquire foreign currency by means of back-to-back loans.

(2) By way of derogation from paragraph 1, UCITS may borrow provided that such a borrowing is:

a) on a temporary basis and represents:

- in the case of investment companies, no more than 10% of their assets, or
- in the case of common funds, no more than 10% of the value of the fund, or

b) to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10% of its assets.

Where a UCITS is authorised to borrow under points a) and b), that borrowing shall not exceed 15% of its assets in total.

Art. 51

(1) Without prejudice to the application of Articles 41 and 42, neither may grant loans to or act as guarantor for third parties

- an investment company, nor
- a management company or depositary acting on behalf of common fund.

(2) Paragraph 1 shall not prevent such undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in Article 41, paragraph 1, points e), g) and h) which are not fully paid.

Art. 52

Neither may carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in Article 41, paragraph 1, points e), g) and h)

- an investment company, nor
- a management company or depositary acting on behalf of a common fund.

Chapter 6 – UCITS established in Luxembourg which market their units in other Member States

Art. 53

A UCITS which markets its units in another Member State shall, in accordance with the laws, regulations and administrative provisions in force in the Member State where its units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making

payments to unitholders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

Art. 54

(1) A UCITS which proposes to market its units in another Member State, shall first submit a notification letter to the CSSF.

The notification letter shall include information on arrangements made for marketing units of the UCITS in the host Member State, including, where relevant, in respect of unit classes. In the context of Article 113, it shall specify in particular that the UCITS is marketed by the management company that manages the UCITS.

(2) A UCITS shall enclose with the notification letter, as referred to in paragraph 1, the latest version of the following documents:

a) its management regulations or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Article 55, paragraph 1, points c) and d); and

b) its key investor information referred to in Article 159, translated in accordance with Article 55, paragraph 1, points b) and d).

(3) The CSSF shall verify whether the documentation submitted by the UCITS in accordance with paragraphs 1 and 2 is complete.

The CSSF shall transmit the complete documentation referred to in paragraphs 1 and 2 to the competent authorities of the Member State in which the UCITS proposes to market its units, no later than ten working days of the date of receipt of the notification letter accompanied by the complete documentation provided for in paragraph 2. The CSSF shall enclose with the documentation an attestation that the UCITS fulfils the conditions imposed by Directive 2009/65/EC.

Upon the transmission of the documentation, the CSSF shall immediately notify the UCITS of the transmission. The UCITS may access the market of the UCITS host Member State as from the date of that notification.

The UCITS must communicate to the competent authorities of the UCITS host Member State any amendments made to the documents referred to in paragraph 2 and shall indicate where those documents can be obtained in electronic form.

(4) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding unit classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of the host Member State before implementing the change.

Art. 55

(1) Where a UCITS markets its units in another Member State, it shall provide to investors within the territory of that Member State all information and documents which it is required to provide to investors in Luxembourg in accordance with Chapter 21.

Such information and documents shall be provided to investors in compliance with the following provisions:

a) without prejudice to the provisions of Chapter 21, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS host Member State;

b) key investor information referred to in Article 159 shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authorities of that Member State;

c) information and documents other than key investor information referred to in Article 159 shall be translated, at the choice of the UCITS, into the official language, or one of the official languages, of the UCITS host Member State, into a language approved by the competent authorities of that Member State or into a language customary in the sphere of international finance; and

d) translations of information and documents under points b) and c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred to therein.

(3) According to Article 157, the frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS shall be subject to the current laws, regulations and administrative provisions of Luxembourg.

Art. 56

For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form such as "investment company" or "common fund" in its designation in a UCITS host Member State as it uses in Luxembourg.

Art. 57

For the purposes of this Chapter, the term "UCITS" refers also to investment compartments of a UCITS.

Art. 58

The provisions of Articles 53 to 57 are also applicable, within the limits provided by the Agreement on the European Economic Area and the instruments relating thereto, where a UCITS situated in Luxembourg markets its units on the territory of a State other than a Member State which is a party to that Agreement.

Chapter 7 – UCITS established in other Member States which market their units in Luxembourg

Art. 59

A UCITS established in another Member State which markets its units in Luxembourg must appoint a credit institution to ensure that facilities are available in Luxembourg for making payments to unitholders and repurchasing or redeeming units.

The UCITS must take the necessary measures to ensure that the information which it is obliged to provide is made available to unitholders in Luxembourg.

Art. 60

(1) If a UCITS established in another Member State proposes to market its units in Luxembourg, the CSSF will receive from the competent authorities of the UCITS home Member State the documentation referred to in Article 93, paragraphs 1 and 2 of Directive 2009/65/EC as well as an attestation certifying that the UCITS fulfils the conditions imposed by Directive 2009/65/EC.

Upon notification to the UCITS of the transmission to the CSSF referred to in this paragraph by the competent authorities of the UCITS home Member State, the UCITS can have access to the Luxembourg market as from the date of this notification.

(2) In the event of a change in the information relating to the arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding unit classes to be marketed, the UCITS shall give written notice thereof to the CSSF before implementing the change.

Art. 61

(1) If a UCITS established in another Member State markets its units in Luxembourg, it must provide investors in Luxembourg with all information and documents that it is required to provide in its home Member State in accordance with Chapter IX of Directive 2009/65/EC.

Such information and documents shall be provided to investors in compliance with the following provisions:

a) without prejudice to the provisions of Chapter IX of Directive 2009/65/EC, such information or documents shall be provided to investors in the way prescribed by the current laws, regulations or administrative provisions in Luxembourg;

b) key investor information referred to in Article 78 of Directive 2009/65/EC, as well as information and documents other than key investor information referred to in Article 78 of Directive 2009/65/EC, shall be translated into Luxembourgish, French, German or English;

c) translations of information and documents under point b) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred to therein.

(3) The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS according to Article 76 of Directive 2009/65/EC shall be subject to the current laws, regulations and administrative provisions of UCITS home Member State.

Art. 62

For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form such as "investment company" or "common fund" in its designation in Luxembourg as it uses in its home Member State.

Art. 63

For the purposes of this Chapter, the term "UCITS" also refers to investment compartments of a UCITS.

Art. 64

The provisions of Articles 59 to 63 are also applicable, within the limits provided by the Agreement on the European Economic Area and the instruments relating thereto, where a UCITS established in a State other than a Member State, which is a party to that Agreement, markets its units in Luxembourg.

Chapter 8 – Mergers of UCITS

A. – Principle, authorisation and approval

Art. 65

For the purposes of this Chapter, the term "UCITS" also refers to investment compartments of a UCITS.

Art. 66

(1) Subject to the conditions set out in this Chapter and irrespective of the manner in which UCITS are constituted under Article 2, paragraph 3, a UCITS established in Luxembourg may, either as a merging UCITS or as a receiving UCITS, be subject to cross-border and domestic mergers as defined in Article 1, points 21 and 22 in accordance with one or more of the merger techniques provided for in Article 1, point 20.

(2) Mergers between UCITS established in Luxembourg where none of the UCITS concerned has been notified in accordance with Article 93 of Directive 2009/65/EC are also covered by this Chapter.

(3) The provisions of Section XIV of the amended Law of 10 August 1915 on commercial companies, as amended, on mergers are not applicable to mergers of UCITS.

(4) Without prejudice to the following sub-paragraph, the instruments of incorporation of a UCITS established in corporate form in Luxembourg must foresee who of the meeting of unitholders or the board of directors or the management board, where applicable, is competent to decide on the effective date of the merger with another UCITS. For UCITS having the legal form of a common fund established in Luxembourg, the management company of these UCITS is, unless otherwise provided in the management regulations, competent to decide on the effective date of a merger with another UCITS. Where the management regulations or the instruments of incorporation provide for the approval by a meeting of unitholders, these documents must provide for the quorum and majority requirements applicable save that with respect to the approval of the common draft terms of the merger by the unitholders, such an approval must be adopted by simple majority at least, without however requiring more than 75% of the votes cast by the unitholders present or represented at the meeting.

In the absence of specific provisions in the management regulations or the instruments of incorporation, any merger must be approved by the management company for merging UCITS having the legal form of a common fund or by the meeting of unitholders deciding by simple majority of the votes cast by unitholders present or represented at the meeting for the merging UCITS in corporate form.

For any merger where the merging UCITS is an investment company which ceases to exist, the effective date of the merger must be decided by a meeting of the unitholders of the merging UCITS deciding in accordance with the quorum and majority requirements provided in the articles of incorporation, it being understood that the provisions of this paragraph apply. For any merging investment company which ceases to exist, the effective date of the merger must be recorded by notarial deed.

For any merger where the merging UCITS is a common fund which ceases to exist, the effective date of the merger must be decided by the management company of this UCITS, unless otherwise provided in the management regulations. For any merging common fund which ceases to exist, the decision regarding the effective date of the merger must be deposited with the register of commerce and companies and published in the *Recueil électronique des sociétés et associations* by way of a notice of the deposit of this decision with the register of commerce and companies, in accordance with the provisions of the amended Law of 10 August 1915 on commercial companies.

Insofar as a merger requires the approval of the unitholders pursuant to the provisions above, only the approval of the unitholders of the compartment(s) concerned by the merger shall be required, unless otherwise provided in the management regulations or the instruments of incorporation of the UCITS.

The practical terms of merger procedures for Luxembourg UCITS concerned by a merger may be laid down by means of a CSSF regulation. Mergers provided for in Article 1, point 20 c) shall be carried out in accordance with the terms and conditions provided for in this Chapter.

Where the receiving UCITS and the merging UCITS are established in Luxembourg, the provisions of this Chapter as to the intervention of the competent authorities of another Member State shall not apply.

Art. 67

(1) Where the merging UCITS is established in Luxembourg, a merger is subject to prior authorisation by the CSSF.

(2) The merging UCITS shall provide the following information to the CSSF:

a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;

b) an up-to-date version of the prospectus and the key investor information, referred to in Article 78 of Directive 2009/65/EC, of the receiving UCITS, if it is established in another Member State;

c) a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with Article 70, they have verified compliance of the particulars set out in Article 69, paragraph 1, points a), f) and g) with the requirements of this Law and the management regulations or the instruments of incorporation of their respective UCITS. In the case where the receiving UCITS is established in another Member State, this statement issued by the depositary of the receiving UCITS confirms that, in accordance with Article 41 of Directive 2009/65/EC, compliance of the particulars set out in Article 40, paragraph 1 points a), f) and g) with the requirements of Directive 2009/65/EC and the management regulations or the instruments of incorporation of the receiving UCITS has been verified; and

d) the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unitholders.

Such information shall be provided to the CSSF in either Luxembourgish, French, German or English.

(3) If it considers that the file is not complete, the CSSF shall request additional information within a maximum of ten working days of receiving the information referred to in paragraph 2.

(4) (a) Where the receiving UCITS is not established in Luxembourg and once the file is complete, the CSSF shall immediately transmit copies of the information referred to in paragraph 2 to the competent authorities of the receiving UCITS home Member State. The CSSF and the competent authorities of the receiving UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on unitholders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unitholders.

If the CSSF considers it necessary, it may require, in writing, that the information to unitholders of the merging UCITS be clarified.

If the competent authorities of the receiving UCITS home Member State consider it necessary, they may require, in writing, and no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modifies the information to be provided to its unitholders.

In such a case, the competent authorities of the receiving UCITS home Member State shall send an indication of their dissatisfaction to the CSSF. They shall inform the CSSF whether they are satisfied with the modified information to be provided to the unitholders of the receiving UCITS within twenty working days of being notified thereof.

(b) Where the receiving UCITS is established in Luxembourg and insofar as the file is complete, the CSSF shall consider the potential impact of the proposed merger on the unitholders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unitholders. If the CSSF considers it necessary, it may require, in writing, (i) that the information to unitholders of the merging UCITS be clarified and (ii) no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modifies the information to be provided to its unitholders.

(5) The CSSF shall inform the merging UCITS, within twenty working days of submission of the complete information, in accordance with paragraph 2, whether or not the merger has been authorised.

(6) Where the receiving UCITS is not established in Luxembourg and in the cases where:

a) the proposed merger complies with all of the requirements of Articles 67, 69, 70 and 71; and

b) the receiving UCITS has been notified, in accordance with Article 60, to market its units in Luxembourg and in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 60; and

c) the CSSF and the competent authorities of the receiving UCITS home Member State are satisfied with the proposed information to be provided to unitholders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received under the fourth sub-paragraph of paragraph 4 (a),

the CSSF shall authorise the proposed merger if these conditions are met. The CSSF shall also inform the competent authorities of the receiving UCITS home Member State of its decision.

Where the receiving UCITS is also established in Luxembourg and in the cases where:

a) the proposed merger complies with all of the requirements of Articles 67, 69, 70 and 71; and

b) the receiving UCITS has been notified, in accordance with Article 60, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 60; and

c) the CSSF is satisfied with the proposed information to be provided to unitholders of the merging and receiving UCITS,

the CSSF shall authorise the proposed merger if these conditions are met.

Art. 68

(1) Where the receiving UCITS is established in Luxembourg and the merging UCITS is established in another Member State, the CSSF must receive copies of the information referred to in Article 67 (2) a), c) and d) from the competent authorities of this other Member State.

(2) The CSSF and the competent authorities of the merging UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on unitholders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unitholders.

If the CSSF considers it necessary, it may require, in writing, and no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 1, that the receiving UCITS modifies the information to be provided to its unitholders.

The CSSF shall inform the competent authorities of the merging UCITS home Member State within twenty working days of being notified thereof whether it is satisfied with the modified information to be provided to the unitholders of the receiving UCITS.

(3) While ensuring observance of the principle of risk-spreading, the receiving UCITS is allowed to derogate from Articles 43, 44, 45 and 46 for six months following the effective date of the merger.

Art. 69

(1) The merging and the receiving UCITS must draw up common draft terms of merger.

The common draft terms of merger shall set out the following particulars:

a) an identification of the type of merger and of the UCITS involved;

b) the background to and rationale for the proposed merger;

c) the expected impact of the proposed merger on the unitholders of both the merging and the receiving UCITS;

d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in Article 75, paragraph 1;

e) the calculation method of the exchange ratio;

f) the planned effective date of the merger;

g) the rules applicable to the transfer of assets and the exchange of units, respectively; and

h) in the case of a merger pursuant to Article 1, point 20 b) and, and as the case may be, Article 1, point 20 c) or as the case may be Article 2, paragraph 1, point p) ii) and, as the case may be, Article 2, paragraph 1, point p) iii) of Directive 2009/65/EC, the management regulations or the instruments of incorporation of the newly constituted receiving UCITS.

(2) The merging and receiving UCITS may decide to include further items in the common draft terms of merger.

B. – Third-party control, information of unitholders and other rights of unitholders

Art. 70

The depositaries of the merging and of the receiving UCITS, insofar as they are established in Luxembourg, must verify the conformity of the particulars set out in Article 69, paragraph 1, points a), f) and g) with the requirements of this Law and with the management regulations or the instruments of incorporation of their respective UCITS.

Art. 71

(1) The merging UCITS established in Luxembourg shall entrust either an approved statutory auditor or, as the case may be, an independent auditor to validate the following:

a) the criteria adopted for valuation of the assets and, as the case may be, the liabilities on the date for calculating the exchange ratio, as referred to in Article 75, paragraph 1;

b) where applicable, the cash payment per unit; and

c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Article 75, paragraph 1.

(2) The approved statutory auditor or the independent auditor of the merging UCITS or the approved statutory auditor or the independent auditor of the receiving UCITS shall be considered approved statutory auditors, or, independent auditors for the purposes of paragraph 1.

(3) A copy of the reports of the approved statutory auditor or, as the case may be, the independent auditor shall be made available on request and free of charge to the unitholders of both the merging UCITS and the receiving UCITS and to their respective competent authorities.

Art. 72

(1) Where merging and/or receiving UCITS are established in Luxembourg, each shall provide appropriate and accurate information on the proposed merger to their respective unitholders so as to enable them to make an informed judgement of the impact of the merger on their investment.

(2) This information shall be provided to unitholders of the merging and of the receiving UCITS established in Luxembourg only after the CSSF has authorised the proposed merger under Article 67.

This information shall be provided at least thirty days before the last date for requesting repurchase or redemption or, as the case may be, conversion without additional charge under Article 73, paragraph 1.

(3) The information to be provided to unitholders of the merging UCITS and/or of the receiving UCITS established in Luxembourg shall include appropriate and accurate information on the proposed merger such as to enable them to take an informed decision on the possible impact of the merger on their investment and to exercise their rights under Articles 66, paragraph 4 and 73.

It shall include the following:

a) the background to and the rationale for the proposed merger;

b) the possible impact of the proposed merger on unitholders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where

relevant, a prominent warning to investors that their tax treatment may be changed following the merger;

c) any specific rights unitholders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain or request a copy of the report of the approved statutory auditor or the independent auditor or the depositary (if applicable in the receiving or merging UCITS home Member State) and the right to request the repurchase or redemption or, as the case may be, the conversion of their units without charge as specified in Article 73, paragraph 1 and the last date for exercising that right;

d) the relevant procedural aspects and the planned effective date of the merger; and

e) a copy of the key investor information of the receiving UCITS, referred to in Article 159, or, as the case may be, in Article 78 of Directive 2009/65/EC.

(4) If the merging or the receiving UCITS has been notified in accordance with Article 93 of Directive 2009/65/EC, the information referred to in paragraph 3 shall be provided in one of the official languages of the relevant UCITS host Member State, or in a language approved by its competent authorities. The UCITS required to provide the information shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

Art. 73

(1) Where the merging and/or the receiving UCITS are established in Luxembourg, their unitholders have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policy and managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding. This right shall become effective from the moment that the unitholders of the merging UCITS and those of the receiving UCITS have been informed of the proposed merger in accordance with Article 72, and shall cease to exist five working days before the date for calculating the exchange ratio referred to in Article 75, paragraph 1.

(2) Without prejudice to paragraph 1, for mergers between UCITS and by way of derogation from Articles 11, paragraph 2, and 28, paragraph 1, point b), the relevant UCITS may temporarily suspend the subscription, repurchase or redemption of units, provided that any such suspension is justified for the protection of the unitholders. The CSSF may moreover require the temporary suspension of the subscription, repurchase or redemption of units, provided that any such suspension is justified by the protection of the unitholders.

C. – Costs and entry into effect

Art. 74

Except in cases where UCITS have not designated a management company, any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging or the receiving UCITS, or to any of their unitholders.

Art. 75

(1) The common draft terms of the merger referred to in Article 69 shall determine the effective date of the merger as well as the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, as the case may be, for determining the relevant net asset value for cash payments. Such dates shall be after the approval, as the case may be, of the merger by unitholders of the receiving UCITS or the merging UCITS.

(2) The entry into effect of the merger shall be made public through all appropriate means by the receiving UCITS established in Luxembourg and shall be notified to the CSSF and to the other competent authorities involved in the merger.

(3) A merger which has taken effect as provided for in paragraph 1 shall not be declared null and void.

Art. 76

(1) A merger effected in accordance with Article 1, point 20., a) shall have the following consequences:

a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;

b) the unitholders of the merging UCITS become unitholders of the receiving UCITS and, as the case may be, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and

c) the merging UCITS established in Luxembourg ceases to exist on the entry into effect of the merger.

(2) A merger effected in accordance with Article 1, point 20,. b) shall have the following consequences:

a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;

b) the unitholders of the merging UCITS become unitholders of the newly constituted receiving UCITS and, as the case may be, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and

c) the merging UCITS established in Luxembourg cease to exist on the entry into effect of the merger.

(3) A merger effected in accordance with Article 1, point 20., c) shall have the following consequences:

a) the net assets of the merging UCITS are transferred to the receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;

b) the unitholders of the merging UCITS become unitholders of the receiving UCITS; and

c) the merging UCITS established in Luxembourg continues to exist until the liabilities have been discharged.

(4) The management company of the receiving UCITS shall confirm in writing to the depositary of the receiving UCITS that the transfer of assets and, as the case may be, liabilities is complete. Where the receiving UCITS has not designated a management company, it shall give that confirmation to the depositary of the receiving UCITS.

Chapter 9 – Master-feeder structures

A. – Scope and approval

Art. 77

(1) A feeder UCITS is a UCITS, or an investment compartment thereof, which has been approved to invest, by way of derogation from Article 2, paragraph 2, first indent, Articles 41, 43 and 46, and Article 48, paragraph 2, third indent of this Law, at least 85% of its assets in units of another UCITS or investment compartment thereof (the "master UCITS").

(2) A feeder UCITS may hold up to 15% of its assets in one or more of the following:

a) ancillary liquid assets in accordance with Article 41, paragraph 2, second sub-paragraph;

b) financial derivative instruments, which may be used only for hedging purposes, in accordance with Article 41 paragraph 1, point g) and Article 42, paragraphs 2 and 3;

c) movable and immovable property which is essential for the direct pursuit of its business, if the feeder UCITS is an investment company.

For the purposes of compliance with Article 42, paragraph 3, the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under point b) of the first sub-paragraph with either:

a) the master UCITS actual exposure to financial derivative instruments in proportion to the feeder UCITS investment into the master UCITS; or

b) the master UCITS potential maximum global exposure to financial derivative instruments provided for in the master UCITS management regulations or instruments of incorporation in proportion to the feeder UCITS investment into the master UCITS.

(3) A master UCITS is a UCITS, or an investment compartment thereof, which:

a) has, among its unitholders, at least one feeder UCITS;

b) is not itself a feeder UCITS; and

c) does not hold units of a feeder UCITS.

(4) The following derogations for a master UCITS shall apply:

a) if a master UCITS has at least two feeder UCITS as unitholders, Article 2, paragraph 2, first indent and Article 3, second indent of this Law shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;

b) if a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Chapter XI and Article 108, paragraph (1), 2nd sub-paragraph of Directive 2009/65/EC shall not apply.

Art. 78

(1) The investment of a feeder UCITS which is established in Luxembourg into a given master UCITS which exceeds the limit applicable under Article 46, paragraph 1 for investments in other UCITS shall be subject to the prior approval of the CSSF.

(2) The feeder UCITS shall be informed within fifteen working days following the submission of a complete file, whether or not the CSSF has approved the feeder UCITS investment into the master UCITS.

(3) The CSSF shall grant approval if the feeder UCITS, its depositary and its approved statutory auditor, as well as the master UCITS, comply with all the requirements set out in this Chapter. For such purposes, the feeder UCITS shall provide the CSSF with the following documents:

a) the management regulations or instruments of incorporation of the feeder UCITS and the master UCITS;

b) the prospectus and the key investor information referred to in Article 159 of the feeder and the master UCITS;

c) the agreement between the feeder and the master UCITS or the internal conduct of business rules referred to in Article 79, paragraph 1;

d) where applicable, the information to be provided to unitholders referred to in Article 83, paragraph 1;

e) if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in Article 80, paragraph 1 between their respective depositaries; and

f) if the master UCITS and the feeder UCITS have different approved statutory auditors, the information-sharing agreement referred to in Article 81, paragraph 1 between their respective auditors.

Points a), b), c) of paragraph 3 of this Article shall not apply in the case where the feeder UCITS and the master UCITS are both established in Luxembourg.

Where the feeder UCITS is established in Luxembourg and the master UCITS is established in another Member State, the feeder UCITS shall also provide the CSSF with an attestation by the competent authorities of the master UCITS home Member State that the master UCITS is a UCITS, or an investment compartment thereof, which fulfils the conditions set out in Article 58, paragraph 3, points b) and c) of Directive 2009/65/EC. Documents shall be provided by the feeder UCITS either in Luxembourgish, French, German or English.

B. – Common provisions for feeder and master UCITS

Art. 79

(1) The master UCITS must provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in this Law. For this purpose, the feeder UCITS shall enter into an agreement with the master UCITS.

The feeder UCITS shall not invest in excess of the limit applicable under Article 46, paragraph 1, in units of that master UCITS until the agreement referred to in the first sub-paragraph has become effective. That agreement shall be made available, on request and free of charge, to all unitholders.

In the event that both master and feeder UCITS are managed by the same management company, the agreement may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this paragraph.

(2) The master and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication, in order to avoid market timing in their units, preventing arbitrage opportunities.

(3) Without prejudice to Article 11, paragraph 2 and Article 28, paragraph 1, point b), if a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of its competent authorities, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units, notwithstanding the conditions laid down in Article 12, paragraph 1, and Article 28, paragraph 5, within the same period of time as the master UCITS.

(4) If a master UCITS is liquidated, the feeder UCITS shall also be liquidated, unless the CSSF approves:

a) the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS; or

b) the amendment of the management regulations or the instruments of incorporation of the feeder UCITS in order to enable it to convert into a UCITS which is not a feeder UCITS.

Without prejudice to specific provisions regarding compulsory liquidation, the liquidation of a master UCITS shall take place no sooner than three months after the master UCITS has informed all of its unitholders and the CSSF of the binding decision to liquidate.

(5) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless the CSSF grants approval to the feeder UCITS to:

a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;

b) invest at least 85% of its assets in units of another master UCITS not resulting from the merger or the division; or

c) amend its management regulations or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

No merger or division of a master UCITS shall become effective, unless the master UCITS has provided all of its unitholders and the competent authorities of the home Member State of its feeder UCITS with the information referred to, or comparable with that referred to, in Article 72, at least sixty days before the proposed effective date.

Unless the CSSF has granted approval pursuant to the first sub-paragraph, point a) above, the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

C. – Depositaries and approved statutory auditors

Art. 80

(1) If the master and the feeder UCITS have different depositaries, those depositaries must enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

Where they comply with the requirements laid down in this Chapter, neither the depositary of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection, where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability, on the part of such depositary or any person acting on its behalf.

The feeder UCITS or, when applicable, the management company of the feeder UCITS, must be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.

(2) The depositary of the master UCITS shall immediately inform the competent authorities of the master UCITS home Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS, about any irregularities it detects with regard to the master UCITS, which are deemed to have a negative impact on the feeder UCITS.

Art. 81

(1) If the master and the feeder UCITS have different approved statutory auditors, those approved statutory auditors shall enter into an information-sharing agreement, in order to ensure the fulfilment of the duties of both approved statutory auditors, including the arrangements taken to comply with the requirements of paragraph 2.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

(2) In its audit report, the approved statutory auditor of the feeder UCITS shall take into account the audit report of the master UCITS. If the feeder and the master UCITS have different accounting years, the approved statutory auditor of the master UCITS shall make an *ad hoc* report on the closing date of the feeder UCITS.

The approved statutory auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

(3) Where they comply with the requirements laid down in this Chapter, neither the approved statutory auditor of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection, where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability, on the part of such approved statutory auditor or any person acting on its behalf.

D. – Compulsory information and marketing communications by the feeder UCITS

Art. 82

(1) In addition to the information provided for in Schedule A of Annex I, the prospectus of the feeder UCITS must contain the following information:

a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85% or more of its assets in units of that master UCITS;

b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with Article 77, paragraph 2;

c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;

d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to Article 79, paragraph 1;

e) how the unitholders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Article 79, paragraph 1;

f) a description of all remuneration and reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and

g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

(2) In addition to the information provided for in Schedule B of Annex I, the annual report of the feeder UCITS must include a statement on the aggregate charges of the feeder UCITS and the master UCITS.

The annual and the half-yearly reports of the feeder UCITS must indicate how the annual and the half-yearly report of the master UCITS can be obtained.

(3) In addition to the requirements laid down in Articles 155, paragraph 1 and 163, paragraph 1, the feeder UCITS must send the prospectus, the key investor information referred to in Article 159 and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to the CSSF.

(4) A feeder UCITS must disclose in any relevant marketing communications that it permanently invests 85% or more of its assets in units of such master UCITS.

(5) A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS must be delivered by the feeder UCITS to investors on request and free of charge.

E. – Conversion of existing UCITS into feeder UCITS and change of master UCITS

Art. 83

(1) A feeder UCITS, which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, must provide the following information to its unitholders:

a) a statement that the CSSF approved the investment of the feeder UCITS in units of such master UCITS;

b) the key investor information referred to in Article 159 concerning the feeder and the master UCITS;

c) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Article 46, paragraph 1; and

d) a statement that the unitholders have the right to request, within thirty days, the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.

That information shall be provided at least thirty days before the date referred to in point c) of this paragraph.

(2) In the event that the feeder UCITS has been notified in accordance with Chapter 7, the information referred to in paragraph 1 shall be provided in Luxembourgish, French, German or English. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

(3) The feeder UCITS is not authorised to invest into the units of the given master UCITS in excess of the limit applicable under Article 46, paragraph 1 before the period of thirty days referred to in paragraph 1, second sub-paragraph has elapsed.

F. – Obligations and competent authorities

Art. 84

(1) The feeder UCITS must monitor effectively the activity of the master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and approved statutory auditor, unless there is reason to doubt their accuracy.

(2) Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit, is received by the feeder UCITS, its management company, or any person acting on behalf of either the feeder UCITS or the management company of the feeder UCITS, the fee, commission or other monetary benefit must be paid into the assets of the feeder UCITS.

Art. 85

(1) Any master UCITS established in Luxembourg shall immediately inform the CSSF of the identity of each feeder UCITS, which invests in its units. If the feeder UCITS is established in another Member State, the CSSF shall immediately inform the competent authorities of the feeder UCITS home Member State of such investment.

(2) The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.

(3) The master UCITS must ensure the timely availability of all information that is required in accordance with this Law, and any other laws, regulations and administrative provisions applicable in Luxembourg, Community law provisions, as well as the management regulations or the instruments of incorporation of the UCITS to the feeder UCITS or, where applicable, its management company, and to the competent authorities, the depositary and the approved statutory auditor of the feeder UCITS.

Art. 86

(1) If the master UCITS and the feeder UCITS are both established in Luxembourg, the CSSF shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter or of any information reported pursuant to Article 154, paragraph 3, with regard to the master UCITS or, where applicable, its management company, depositary or approved statutory auditor.

(2) If the master UCITS is established in Luxembourg and the feeder UCITS is established in another Member State, the CSSF shall immediately communicate any decision, measure, observation of non-compliance with the conditions of this Chapter or information reported pursuant to Article 154, paragraph 3, with regard to the master UCITS or, where applicable, its management company, depositary or approved statutory auditor, to the competent authorities of the feeder UCITS home Member State.

(3) If the master UCITS is established in another Member State and the feeder UCITS is established in Luxembourg, the CSSF shall transmit any decision, measure, observation referred to in Article 67, paragraph 2 of Directive 2009/65/EC and which have been communicated to the CSSF by the competent authorities of the master UCITS home Member State.

PART II: OTHER UCIs

Chapter 10 – Scope

Art. 87

This Part shall apply to all UCITS referred to in Article 3 and to all other UCIs situated in Luxembourg not covered by Part I.

Art. 88

A UCI shall be deemed to be established in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is established in Luxembourg. The head office must be located in Luxembourg.

Chapter 10*bis* – General provisions

Art. 88-1

Any UCI governed by Part II qualifies as an AIF within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers.

This Chapter sets out the general provisions applicable to UCIs governed by Part II by virtue of the Law of 12 July 2013 relating to alternative investment fund managers.

Art. 88-2

(1) Without prejudice to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, every UCI must be managed by a single AIFM, which may either be an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, or an AIFM established in another Member State or in a third country authorised under Chapter II of Directive 2011/61/EU, subject to the application of Article 66, paragraph 3 of the aforementioned Directive where the UCI is managed by an AIFM established in a third country.

(2) The AIFM must be determined in accordance with the provisions of Article 4 of the Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Article 5 of Directive 2011/61/EU respectively.

The AIFM is:

a) either an external AIFM, which is the legal person appointed by the UCI or on behalf of the UCI and which through this appointment, is responsible for managing this UCI; in case of appointment of an external AIFM, the latter must, subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, be authorised in accordance with the provisions of Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, or in accordance with the provisions of Chapter II, respectively and, where applicable, also in accordance with the provisions of Chapter VII of Directive 2011/61/EU;

b) or where the legal form of the UCI permits an internal management and where the UCI's governing body chooses not to appoint an external AIFM, the UCI itself.

An internally managed UCI within the meaning of point b) of paragraph (2) of this Article must, in addition to the authorisation required under Article 129 and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, be authorised as an AIFM under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers. The relevant UCI must ensure at all times compliance with all provisions of the aforementioned law, provided that those provisions are applicable to

it.

Art. 88-3

The assets of a UCI shall be entrusted to a single depositary for safe-keeping, appointed in accordance with the provisions of Article 17, paragraph 1, Article 33, paragraph 1 or Article 39 depending on the legal form adopted by the UCI concerned.

This provision is also applicable to UCIs which are managed by an AIFM authorised under Chapter 2 of the amended Law of 12 July 2013 relating to alternative investment fund managers as well as to UCIs the AIFM of which benefits from and uses the derogations provided for in Article 3 of said law.

Art. 88-4

Without prejudice to the application of the provisions of Article 9, 28 paragraph 4 and 99, paragraph 5, the valuation of the assets of a UCI managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers is performed in accordance with the rules laid down in Article 17 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 88-5

The AIFM of a UCI is authorised to delegate to third parties the power to carry out on its behalf one or more of its functions. In this case, the delegation of functions by the AIFM must comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU, in case of UCIs managed by an AIFM established in Luxembourg, and in accordance with the provisions provided for in Article 20 of Directive 2011/61/EU, in case of UCIs managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66, paragraph 3 of the aforementioned Directive where the UCI is managed by an AIFM established in a third country. This Article shall not apply if the AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers.

Art. 88-6

The marketing by an AIFM in the European Union of units or shares of UCIs as well as the management of such UCIs in the European Union on a cross-border basis are governed by the provisions of Chapter 6 of the Law of 12 July 2013 relating to alternative investment fund managers in the case of UCIs managed by an AIFM established in Luxembourg, or by the provisions of Chapters VI and VII of Directive 2011/61/EU in the case of UCIs managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66, paragraph 3 of the aforementioned Directive where the UCI is managed by an AIFM established in a third country. This Article shall not apply if the AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers.

Chapter 11 – Common funds

Art. 89

(1) For the purpose of this Part, any undivided collection of assets shall be regarded as a common fund if it is made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units intended for placement with the public by means of a public or private offer.

(2) The management of a common fund shall be carried out by a management company having its registered office in Luxembourg, which complies with the conditions set out in Chapter 15 or 16 of Part IV.

(3) (…)[11]

Art. 90

(1) Articles 6, 8, 9, 10, 11 (1), 12 (1) b), 12 (3), 13 (1), 13 (2) a) to i), 14, 15, 16, 17, 18, 18*bis*, 19, 20, 21, 22, 23 and 24 are applicable to common funds subject to this Chapter.

(2) (…)[12]

Art. 91

(1) A CSSF regulation may determine:

a) the minimum frequency for the determination of the issue and repurchase prices for units of the common fund;

b) the minimum percentage of the assets of the common fund which must be represented by liquid assets;

c) the maximum percentage of the assets of the common fund which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the common fund may hold;

e) the maximum percentage of the assets of the common fund which may be invested in securities issued by the same body;

f) the conditions under which and possibly the maximum percentages the common fund may invest in securities of other UCIs;

g) the maximum percentage of the amounts the common fund is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with the foregoing paragraph may be differentiated depending on whether or not the common funds display certain characteristics or fulfil certain conditions.

(3) A newly created common fund may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point e) above for six months following the date of its authorisation.

(4) Where the limits referred to in points c), d), e), f) and g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the management company must adopt as a priority objective for its sales transactions the remedying of that situation of the fund, taking due account of the interests of the unitholders.

Art. 92

(1) Neither the management company nor the depositary, each acting on behalf of the common fund, may, either directly or indirectly, grant loans to purchasers and unitholders of the common fund with a view to the acquisition or subscription of units.

[11] Repealed by the Law of 12 July 2013 relating to alternative investment fund managers.
[12] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

(2) Paragraph 1 shall not prevent common funds from acquiring transferable securities which are not fully paid up.

Chapter 12 – SICAVs

Art. 93

For the purposes of this Part, SICAVs shall be taken to mean those companies which have adopted the form of a public limited company[13] governed by Luxembourg law,

- whose sole object is to invest their funds in assets in order to spread the investment risks and to ensure for their investors the benefit of the results of the management of their assets, and

- whose units are intended to be placed with the public by means of a public or private offer, and

- whose articles of incorporation provide that the amount of capital shall, at all times, be equal to the value of the net assets of the company.

Art. 94

The share capital of a SICAV may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000). This minimum must be reached within a period of six months following the authorisation of the SICAV. A CSSF regulation may raise that minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

Art. 95

(1) Articles 26, 28 (1) a), 28 (2) a), 28 (3) to (10), 29, 30, 31, 32, 33, 34, 34*bis*, 35, 36 and 37 are applicable to the SICAVs subject to this Chapter.

(1*bis*) (…)[14]

(2) SICAVs which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, which have appointed an external AIFM within the meaning of point a) of Article 88-2, paragraph 2, are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the power to carry out on their behalf, one or more of their functions of administration and marketing, to the extent that the external AIFM does not itself perform the functions in question.

In that case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the SICAV, in particular, it must not prevent the SICAV from acting, or from being managed, in the best interests of investors.

For internally managed SICAVs within the meaning of point b) of Article 88-2, paragraph 2 and which do not or cannot make use of the derogations laid down in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, the delegation of one or more of their functions must comply with all the conditions laid down in Article 18 of the Law of 12 July 2013 relating to alternative investment fund managers.

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13 *société anonyme*

14 Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

(3) SICAVs whose AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers are authorised to delegate to third parties for the purpose of a more efficient conduct of their activities, to carry out, on their behalf, one or more of their functions. In such a case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the SICAV, and in particular it must not prevent the SICAV from acting, or from being managed, in the best interests of the investors;

c) when the delegation concerns investment management, the mandate may be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision, when the mandate is given to a third country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country must be ensured;

d) where the conditions of point c) are not fulfilled, the delegation can only become effective after prior approval of the CSSF; and

e) a mandate with regard to the core function of investment management shall not be given to the depositary.

Art. 96

(1) A CSSF regulation may determine:

a) the minimum frequency for the determination of the issue and, where the articles of incorporation provide for the right of unitholders to have their units repurchased, the repurchase prices for units of the SICAV;

b) the minimum percentage of the assets of a SICAV which must be represented by liquid assets;

c) the maximum percentage of the assets of the SICAV which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the SICAV may hold;

e) the maximum percentage of the assets which the SICAV may invest in securities issued by the same body;

f) the conditions under which and possibly the maximum percentages the SICAV may invest in securities of other UCIs;

g) the maximum percentage of the amounts the SICAV is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with the foregoing paragraph may be differentiated depending on whether or not the SICAVs display certain characteristics or fulfil certain conditions.

(3) A newly created SICAV may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point e) above for six months following the date of its authorisation.

(4) Where the maximum percentages fixed by reference to points c), d), e), f) and g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the SICAV must adopt as a priority objective for its sales transactions, the remedying of that situation, taking due account of the interests of the unitholders.

Art. 96*bis*

Notwithstanding Article 309 of the amended Law of 10 August 1915 on commercial companies, SICAVs referred to under this Chapter as well as their subsidiaries are exempt from the obligation to consolidate the accounts of the companies owned for investment purposes.

Chapter 13 – UCIs which have not been constituted as common funds or SICAVs

Art. 97

This Chapter is applicable to all companies and all undertakings other than common funds or SICAVs

- whose sole object is the collective investment of their funds in assets in order to spread the investment risks and to ensure for the investors the benefit of the results of the management of their assets, and

- whose units are intended to be placed with the public by means of a public or private offer.

Art. 98

(1) The net assets of the UCIs falling within this Chapter may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000).

This minimum must be reached within a period of six months following their authorisation. A CSSF regulation may raise that minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

(2) If the net assets have fallen below two thirds of the legal minimum, the directors or the management board, as the case may be, or managers must submit the question of the dissolution of the UCI to a general meeting for which no quorum shall be prescribed and which shall decide by simple majority of the units represented at the meeting.

(3) If the net assets have fallen below one quarter of the legal minimum, the directors or the management board, as the case may be, or the managers must submit the question of the dissolution to a general meeting for which no quorum shall be prescribed; the dissolution may be resolved by investors holding one quarter of the units represented at the meeting.

(4) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the net assets have fallen below two thirds or one fourth of the legal minimum, as the case may be.

(5) If the instruments of incorporation of the undertaking do not provide for general meetings, the directors or the management board, as the case may be, or the managers must, if the net assets of the UCI have fallen below two thirds of the legal minimum, inform the CSSF without delay. In such a case, the CSSF may, having regard to the circumstances, require the directors or the managers to liquidate the UCI.

Art. 99

(1) A CSSF regulation may determine:

a) the minimum frequency for the determination of the issue and, in case the instruments of incorporation provide the right for the unitholders or members to have their units redeemed, the redemption price of the shares or units of the UCI;

b) the minimum percentage of the assets of the UCI which must be represented by liquid assets;

c) the maximum percentage of the assets of the UCI which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the UCI may hold;

e) the maximum percentage of the assets of the UCI which may be invested in securities issued by the same body;

f) the conditions under which and possibly the maximum percentages the UCI may invest in securities of other UCIs;

g) the maximum percentage of the amounts the UCI is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with paragraph 1 above may be differentiated depending on whether or not the UCI displays certain characteristics or fulfils certain conditions.

(3) A newly created UCI may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point e) above, for six months following the date of its authorisation.

(4) Where the maximum percentages fixed by reference to points c), d), e), f) and g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the UCI must adopt as a priority objective for its sales transactions, the remedying of that situation, taking due account of the interests of the unitholders or members.

(5) The management regulations or the instruments of incorporation of the UCI provide for the principles and methods of valuation of the assets of the UCI. Unless otherwise provided in the management regulations or the instruments of incorporation, the valuation of the assets of the UCI shall be based in the case of officially listed securities, on the last known stock exchange quotation, unless such quotation is not representative. For securities which are not so listed and for securities which are so listed but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value which must be estimated with care and in good faith.

(6) Articles 28 (5), (…)[15], 33, 34, 34*bis*, 35, 36 and 37 are applicable to the UCIs subject to this Chapter.

(6*bis*) (…)[16]

(6*ter*) UCIs which do not have the legal form of a common fund or a SICAV and whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, which have appointed an external AIFM within the meaning of point a) of Article 88-2, paragraph 2, are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the power to carry out, on their behalf, one or more of their functions of administration and marketing, to the extent that the external AIFM does not itself perform the functions in question.

In that case, the following preconditions must be complied with:

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[15] Repealed by the Law of 12 July 2013 on alternative investment fund managers

[16] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the SICAV; in particular, it must not prevent the SICAV from acting, or from being managed, in the best interests of investors.

For UCIs which do not have the legal form of a common fund or a SICAV and which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, which are internally managed within the meaning of point b) of Article 88-2, paragraph 2, the delegation of one or more of their functions must comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 relating to alternative investment fund managers.

(6*quater*) UCIs which do not have the legal form of a common fund or a SICAV and whose AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, to carry out, on their behalf, one or more of their functions. In this case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the UCI, and in particular it must not prevent the UCI from acting, or from being managed, in the best interests of the investors;

c) when the delegation concerns the investment management, the mandate may only be given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision. When the mandate is given to a third country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country must be ensured;

d) where the conditions of point c) are not fulfilled, the delegation can only become effective after the prior approval of the CSSF; and

e) a mandate with regard to the core function of investment management shall not be given to the depositary.

(7) The articles of incorporation of the UCI having adopted the form of one of the companies referred to in Article 2 of the Law of 10 August 1915 on commercial companies, as amended, and any amendment to these articles of incorporation shall be recorded in a special notarial deed, drawn up in French, German or English, as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is in English, the requirement to attach a translation into an official language to that deed when it is filed with the registration authorities, does not apply. This requirement does not apply either to other deeds which must be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of the abovementioned companies or of a merger proposal concerning such companies.

(8) By derogation to Article 73, sub-paragraph 2 of the Law of 10 August 1915 on commercial companies, as amended, UCIs subject to this Chapter and which have adopted the form of a public limited company or of a corporate partnership limited by shares[17], are not required to send the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board to the registered unitholders, at the same time as the convening notice to the annual general meeting. The convening notice indicates the place and the practical arrangements for providing these documents to the unitholders and shall specify that each unitholder may

[17] *société en commandite par actions*

request that the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board are sent to him.

(9) The convening notices to general meetings of unitholders may provide that the quorum and the majority at the general meeting shall be determined according to the units issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The rights of a unitholder to attend a general meeting and to exercise the voting rights attaching to his units are determined in accordance with the units held by this unitholder at the Record Date.

(10) The provisions of the amended Law of 10 August 1915 on commercial companies are applicable to UCIs falling within the scope of this Chapter, insofar as this Law does not derogate therefrom.

PART III: FOREIGN UCIs

Chapter 14 – General provisions and scope

Art. 100

(1) Without prejudice to paragraph (2), UCIs other than the closed-ended type established or operating under foreign laws, which are not subject to Chapter 7 and whose securities are marketed to retail investors in or from Luxembourg, must be subject in their home State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors. These UCIs must moreover be subject to supervision considered by the CSSF to be equivalent to that laid down in this Law. Article 59 is applicable to these UCIs.

(2) This Article is not applicable to the marketing of units or shares of foreign law AIFs to professional investors in Luxembourg which is made in compliance with the provisions of Chapters 6 and 7 of the Law of 12 July 2013 relating to alternative investment fund managers where marketing is undertaken by an AIFM established in Luxembourg, or in accordance with the provisions of Chapters VI and VII of Directive 2011/61/EU where marketing is undertaken by an AIFM established in another Member State or in a third country, subject to the provisions of Article 58(5) of the Law of 12 July 2013 relating to alternative investment fund managers.

PART IV: MANAGEMENT COMPANIES

Chapter 15 – Management companies managing UCITS governed by Directive 2009/65/EC

Title A. – Conditions for taking up business of management companies having their registered office in Luxembourg

Art. 101

(1) Access to the business of management companies having their registered office in Luxembourg within the meaning of this Chapter is subject to prior authorisation by the CSSF. Authorisation granted under this Law to a management company shall be valid for all Member States and shall be notified to the European Securities and Markets Authority.

A management company shall be incorporated as a public limited company, a private limited company[18], a cooperative company[19], a cooperative company set up as a public limited company[20] or a corporate partnership limited by shares. The capital of that company must be

[18] *société à responsabilité limitée*
[19] *société coopérative*
[20] *société coopérative organisée* comme *une société anonyme*

represented by registered shares. The provisions of the amended Law of 10 August 1915 on commercial companies are applicable to management companies subject to this Chapter, insofar as this Law does not derogate therefrom.

Authorised management companies are entered by the CSSF on a list. This entry is tantamount to authorisation and is notified by the CSSF to the management company concerned. Applications for entry on the list must be filed with the CSSF before the incorporation of the management company. The incorporation of the management company can only be undertaken after notification of the authorisation by the CSSF. This list and modifications made thereto are published in the *Mémorial*[21] by the CSSF.

(2) No management company shall engage in activities other than the management of UCITS authorised according to Directive 2009/65/EC with the exception of the additional management of other UCIs which are not covered by the aforementioned Directive and for which the management company is subject to prudential supervision but the units of which cannot be marketed in other Member States of the European Union under Directive 2009/65/EC.

The activity of the management of UCITS includes the functions listed in Annex II of this Law.

(3) By way of derogation from paragraph 2, management companies may also provide the following services:

a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in section B of Annex II of the amended Law of 5 April 1993 on the financial sector;

b) as non-core services:

- investment advice concerning one or more of the instruments listed in section B of Annex II of the amended Law of 5 April 1993 on the financial sector;

- safe-keeping and administration in relation to units of UCIs.

Management companies shall in no case be authorised under this Chapter to provide only the services mentioned in this paragraph or to provide non-core services without being authorised for the services referred to in point a).

For the purpose of this Article, investment advice consists of the provision of personalised recommendations to a client, either upon the request of this client or at the management company's initiative, regarding one or more transactions concerning financial instruments referred to in section B of Annex II of the amended Law of 5 April 1993 on the financial sector.

For the purpose of this Article, a personalised recommendation is a recommendation which is addressed to a person by reason of his capacity as investor or potential investor or its capacity as agent of an investor or of a potential investor.

This recommendation has to be adapted to this person or has to be based on the examination of this person's personal circumstances and has to recommend the realisation of an operation of the following categories:

a) the purchase, the sale, the subscription, the exchange, the repayment, the holding or the underwriting of a particular financial instrument;

[21] The *Mémorial B, Recueil Administratif et Economique* is the part of the Luxembourg official gazette in which certain administrative publications are made.

b) the exercise or non-exercise of the right conferred by a particular financial instrument to purchase, to sell, to subscribe, to exchange or to reimburse a financial instrument.

A recommendation is not a personalised recommendation if it is exclusively disseminated by distribution channels within the meaning of Article 1, point 18) of the Law of 9 May 2006 on market abuse or if it is intended for the public.

(4) Article 1-1, Article 37-1 and Article 37-3 of the amended Law of 5 April 1993 on the financial sector shall apply *mutatis mutandis* to the provision by management companies of the services mentioned in paragraph 3 of this Article.

Management companies which provide the services referred to in point a) of paragraph 3 of this Article must furthermore comply with the Luxembourg regulations implementing Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast).

(5) The assets under management in application of paragraphs 2 and 3 do not form part of the estate in case of insolvency of the management company. They cannot be claimed by the creditors of the management company.

Art. 101-1

(1) By way of derogation from Article 101, paragraph 2, management companies having their registered office in Luxembourg authorised pursuant to this Chapter which are appointed as AIFM of an AIF within the meaning of Directive 2011/61/EU must also obtain prior authorisation by the CSSF as AIFM of an AIF under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers.

(2) Where a management company applies for authorisation under paragraph 1, this management company is exempt from providing the information or documents which the management company has already provided to the CSSF when applying for authorisation under Article 102, provided that such information or documents remain up-to-date.

(3) Management companies referred to in this Article can only engage in the activities referred to in Annex I of the Law of 12 July 2013 relating to alternative investment fund managers and in the additional activities of the management of UCITS subject to authorisation pursuant to Article 101.

In the context of their management activity of managing AIFs, these management companies may also provide non-core services within the meaning of Article 5, paragraph 4 of the Law of 12 July 2013 relating to alternative investment fund managers, comprising reception and transmission of orders in relation to financial instruments.

(4) Management companies appointed as AIFMs of AIFs within the meaning of this Article are subject to all the rules provided for by the Law of 12 July 2013 relating to alternative investment fund managers, to the extent that these rules are applicable to them.

(5) The management of a UCI subject to Part II by a management company appointed as AIFM within the meaning of this Article is subject, as the case may be, to the rules laid down in Articles 17, 18, 18*bis*, 19 and 20 or in Articles 33, 34, 34*bis*, 35 and 37 of this Law.

Art. 102

(1) The CSSF shall not grant authorisation to a management company unless the following conditions are met:

a) the management company has an initial capital of at least one hundred and twenty-five thousand euros (EUR 125,000) taking into account the following:

- When the value of the portfolios of the management company exceeds two hundred and fifty million euros (EUR 250,000,000), the management company must be required to provide an additional amount of own funds. This additional amount of own funds is equal to 0.02% of the amount by which the value of the portfolios of the management company exceeds two hundred and fifty million euros (EUR 250,000,000). The required total of the initial capital and the additional amount must not, however, exceed ten million euros (EUR 10,000,000).

- For the purposes of this paragraph, the following portfolios are deemed to be the portfolios of the management company:

  i) common funds managed by the management company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

  ii) investment companies for which the management company is the designated management company;

  iii) other UCIs managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.

- Irrespective of the amount of these requirements, the own funds of the management company shall never be less than the amount prescribed in Article 21 of Directive 2006/49/EC.

Management companies may not provide up to 50% of the additional amount of own funds referred to above if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking. The credit institution or insurance undertaking must have its registered office in a Member State or in a non-Member State provided that it is subject to prudential rules considered by the CSSF as equivalent to those laid down in EU law.

b) The funds referred to in paragraph 1 a) are to be maintained at the permanent disposal of the management company and to be invested in its own interest.

c) The persons who effectively conduct the business of a management company must be of sufficiently good repute and be sufficiently experienced also in relation to the type of UCITS managed by the management company. To that end, the identity of these persons and of every person succeeding them in office must be communicated forthwith to the CSSF. The conduct of the business of a management company must be determined by at least two persons meeting such conditions;

d) the application for authorisation must be accompanied by a programme of operations setting out, *inter alia*, the organisational structure of the management company;

e) both its head office and its registered office are located in Luxembourg.

f) Directors of a management company must be of sufficiently good repute and sufficiently experienced within the meaning of Article 129, paragraph 5, in relation to the type of UCITS or UCI concerned.

(2) Moreover, where close links exist between the management company and other natural or legal persons, the CSSF shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

The CSSF shall also refuse authorisation, if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

The CSSF shall require management companies to provide it with the information required to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

(3) The applicant shall be informed, within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given where an authorisation is refused.

(4) A management company may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the management company, the granting of authorisation implies the obligation to notify the CSSF, spontaneously in writing and in a complete, coherent and comprehensible manner, of any change regarding the substantial information upon which the CSSF based itself to examine the application for authorisation.

(5) The CSSF may withdraw the authorisation issued to a management company subject to this Chapter only where that company:

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased to exercise the activity covered by this Chapter for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) no longer complies with the Law of 5 April 1993 on the financial sector, as amended, resulting from the transposition of Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Article 101, paragraph 3, point a) above;

e) has seriously and/or systematically infringed the provisions of this Law or of regulations adopted pursuant thereto;

f) falls within any of the other cases where this Law provides for withdrawal.

(6) In the case where a management company pursues collective portfolio management activities on a cross-border basis pursuant to Article 116, the CSSF shall consult the competent authorities of the UCITS home Member State before withdrawing the authorisation of the management company.

Art. 103

(1) The CSSF shall not grant authorisation to take up the business of a management company until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The CSSF shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, it is not satisfied as to the suitability of such shareholders or members.

(2) The competent authorities of the other Member State involved shall be consulted beforehand in relation to the authorisation of any management company which is:

a) a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State;

b) a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or

c) controlled by the same natural or legal persons as those who control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

Art. 104

(1) The authorisation of a management company is subject to the condition that the audit of its annual accounting documents is entrusted to one or more approved statutory auditors who can prove that they have adequate professional experience.

(2) Any change regarding the approved statutory auditors must be previously approved by the CSSF.

(3) The institution of supervisory auditors[22] provided for by the Law of 10 August 1915 concerning commercial companies, as amended, and by Article 140 of that Law, shall not apply to management companies subject to this Chapter.

(4) Each Luxembourg management company subject to the supervision of the CSSF whose accounts have to be audited by an approved statutory auditor, must communicate to the CSSF spontaneously the reports and written comments of the approved statutory auditor in the context of its audit of the annual accounting documents.

The CSSF may regulate the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the approved statutory auditor referred to in the preceding sub-paragraph, without prejudice to the legal provisions governing the content of the independent auditor's[23] report.

(5) The approved statutory auditor must report promptly to the CSSF any fact or decision which it has become aware of while carrying out the audit of the accounting information contained in the annual report of a management company or any other legal task concerning a management company or a UCI, where any such fact or decision is likely to:

- constitute a material breach of this Law or the regulations adopted for its execution ; or

- impair the continuous functioning of the management company, or of an undertaking contributing towards its business activity; or

- lead to a refusal to certify the accounts or to the expression of reservations thereon.

The approved statutory auditor has also a duty to promptly report to the CSSF in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a management company, any fact or decision concerning the management company and meeting the criteria listed in the preceding sub-paragraph, of which it has become aware while carrying out the audit of the accounting information contained in its annual report or while carrying out any other legal task related to another

[22] *commissaires aux comptes*
[23] *contrôleur légal des comptes*

undertaking having close links resulting from a control relationship with this management company or an undertaking contributing towards its business activity.

If, in the discharge of its duties, the approved statutory auditor becomes aware that the information provided to investors or to the CSSF in the reports or other documents of the management company does not truly describe the financial situation and the assets and liabilities of the management company, it is obliged to inform the CSSF forthwith.

The approved statutory auditor is also obliged to provide the CSSF with all information or certificates which it may require on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of its duties.

The disclosure to the CSSF in good faith by the approved statutory auditor of any fact or decision referred to in this paragraph does not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and shall not result in liability of any kind of the approved statutory auditor.

[…][24]

The CSSF may request an approved statutory auditor to perform a control of one or several particular aspects of the activities and operations of a management company. This control is performed at the expense of the management company concerned.

Art. 105

In the event of the voluntary liquidation of a management company, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

Art. 105*bis*

(1) The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of management companies, whose entry on (i) the list provided for in Article 101, paragraph 1 and, where applicable, (ii) the list provided for in Article 7, paragraph 1 of the Law of 12 July 2013 relating to alternative investment fund managers, has definitively been refused or withdrawn.

(2) The decision of the CSSF regarding the withdrawal from the lists referred to in paragraph 1 of this Article shall, as from the notification thereof to the management company and until the decision has become final, ipso jure entail the suspension of any payment by this management company and prohibition, on penalty of nullity, of taking any measures other than protective measures, except with the authorisation of the CSSF.

Title B. – Relations with third countries

Art. 106

Relations with third countries shall be regulated in accordance with the rules laid down in Article 15 of Directive 2004/39/EC.

For the purpose of this Law, the terms "firm/investment firm" and "investment firms" contained in Article 15 of Directive 2004/39/EC shall mean respectively "management company" and "management companies"; the term "providing investment services" contained in Article 15, paragraph 1 of Directive 2004/39/EC shall mean "providing services".

[24] Repealed by the Law of 21 December 2012.

Title C. – Operating conditions applicable to management companies having their registered office in Luxembourg

Art. 107

(1) The management company must comply at all times with the conditions laid down in Article 101 and Article 102, paragraphs 1 and 2 above. The own funds of a management company shall not fall below the level specified in Article 102, paragraph 1 point a). If they do, however, the CSSF may, where the circumstances so justify, allow such firm a limited period in which to rectify its situation or cease its activities.

(2) The prudential supervision of a management company shall be the responsibility of the CSSF, whether or not the management company establishes a branch as defined in Article 1 or provides services in another Member State or not, without prejudice to those provisions of Directive 2009/65/EC which confer responsibility to the authorities of the host Member State.

Art. 108

(1) Qualifying holdings in a management company shall be subject to the same rules as those applicable to investment firms under Article 18 of the Law of 5 April 1993 on the financial sector, as amended.

(2) For the purpose of this Law, the expressions "firm/investment firm" and "investment firms" contained in Article 18 of the Law of 5 April 1993 on the financial sector, as amended, shall be construed respectively as "management company" and "management companies".

Art. 109

(1) With regard to the nature of the UCITS managed by it and in furtherance of the prudential rules it is required to observe at all times with regard to the activity of management of UCITS according to Directive 2009/65/EC, a management company shall be required:

a) to have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the management regulations or to the instruments of incorporation and the legal provisions in force;

b) to be structured and organised in such a way as to minimise the risk of UCITS or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS or between two UCITS.

(2) The management company the authorisation of which also covers the discretionary portfolio management service mentioned in Article 101, paragraph 3, point a), shall:

- not be permitted to invest all or a part of the investor's portfolio in units of UCITS it manages, unless it has received the prior general approval from the client;

- be subject with regard to the services referred to in Article 101, paragraph 3 to the provisions laid down by the Law of 27 July 2000 implementing Directive 97/9/EC on

investor-compensation schemes in the amended Law of 5 April 1993 on the financial sector[25].

Art. 110

(1) Management companies are authorised to delegate to third parties, for the purpose of a more efficient conduct of their business, the power to carry out on their behalf one or more of their functions. In that case, all of the following preconditions shall be complied with:

a) the management company must inform the CSSF in an appropriate manner; the CSSF must, without delay, transmit the information to the competent authorities of the UCITS home Member State;

b) the mandate may not prevent the effectiveness of supervision over the management company; in particular, it must not prevent the management company from acting, or the UCITS from being managed, in the best interests of the investors;

c) when the delegation concerns investment management, the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment allocation criteria periodically laid down by the management company;

d) when the mandate concerns investment management and is given to a third country undertaking, cooperation between the CSSF and the supervisory authority of that country must be ensured;

e) a mandate with regard to the core function of investment management must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unitholders;

f) measures must exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;

g) the mandate must not prevent the persons who conduct the business of the management company from giving at any time further instructions to the undertaking to which functions are delegated or from withdrawing the mandate with immediate effect when this is in the interests of investors;

h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question; and

i) the UCITS' prospectuses must list the functions delegated by the management company.

(2) The liability of the management company or the depositary shall not be affected by delegation by the management company of any functions to third parties. The management company shall not delegate its functions to the extent that it becomes a letter box entity.

[25] This requires the management company concerned to be a member of a Luxembourg-based investor compensation scheme.

Art. 111

In the conduct of its business activities, a management company authorised under this Chapter shall, at all times, by virtue of rules of conduct:

a) act honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market,

b) act with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market,

c) have and employ efficiently the resources and procedures that are necessary for the proper performance of its business activities,

d) try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS it manages are fairly treated, and

e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

Art. 111*bis*

(1) The management companies referred to in this Chapter shall establish and apply remuneration policies and practices that are consistent with, and promote, sound and effective risk management and that neither encourage risk taking which is inconsistent with the risk profiles, the fund rules or instruments of incorporation of the UCITS that they manage nor impair compliance with the management company's duty to act in the best interest of the UCITS.

(2) The remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits.

(3) The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.

Art. 111*ter*

(1) When establishing and applying the remuneration policies referred to in Article 111*bis*, management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation in such UCITS that the management company manages;

b) the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors of this UCITS, and includes measures to avoid conflicts of interest;

c) the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation. The tasks referred to in this point shall be undertaken only by members of the management body who do not perform any executive functions in the management company concerned and who have expertise in risk

management and remuneration;

d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performances of the business areas that they control;

f) the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;

g) where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;

h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;

i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;

j) fixed and variable components of total remuneration are appropriately balanced and the fixed remuneration component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable components, including the possibility to pay no variable remuneration component;

k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

m) subject to the legal structure of the UCITS and its fund rules or its instruments of incorporation, a substantial portion, and in any event at least 50%, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50% of the total portfolio managed by the management company, in which case the minimum of 50% does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS. This point shall apply to both the portion of the variable remuneration component deferred in line with point n) and the portion of the variable remuneration component not deferred;

n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly

aligned with the nature of the risks of the UCITS in question.

The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred;

o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and of the UCITS that it manages.

If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments defined in point m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in point m), subject to a five-year retention period;

q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Law.

(2) The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket or senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profile of the UCITS that they manage.

(3) Management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee that is, where appropriate, set up in accordance with the guidelines of the European Securities Markets Authority referred to in Article 14a (4) of the Directive 2009/65/EC shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

In those management companies where employee representation on the management body is provided for by the Labour Code, the remuneration committee shall include one or more employee representatives. When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.

Art. 112

A management company shall take measures in accordance with Article 53 and establish appropriate procedures and arrangements to ensure that it deals properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that the management company manages a UCITS established in another Member State. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.

The management company shall establish appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State.

Art. 112*bis*

(1) Management companies are authorised to appoint tied agents within the meaning of point 1) of Article 1 of the amended Law of 5 April 1993 on the financial sector.

(2) Where a management company decides to appoint tied agents, this management company must, within the limits of activities permitted under this Law, comply with the same rules as those applicable to investment firms under Article 37-8 of the amended Law of 5 April 1993 on the financial sector. For the purpose of applying this paragraph, the term "investment firm" in Article 37-8 of the amended Law of 5 April 1993 on the financial sector shall read "management company".

Title D. – The right of establishment and the freedom to provide services

Art. 113

Where a management company authorised under this Chapter proposes, without establishing a branch, only to market the units of the UCITS it manages as provided for in Annex II in a Member State other than the UCITS home Member State, without proposing to pursue any other activities or services, such marketing shall be subject only to the requirements of Chapter 6.

I. Freedom of establishment and freedom to provide services in another Member State by a management company authorised in accordance with this Chapter

Art. 114

(1) In addition to meeting the conditions imposed in Articles 101 and 102, a management company authorised under this Chapter wishing to establish a branch within the territory of another Member State to pursue the activities for which it has been authorised shall notify the CSSF.

(2) The notification provided for in paragraph 1 shall be accompanied by the following information and documents:

a) the Member State within the territory of which the management company plans to establish a branch;

b) a programme of operations setting out the activities and services according to Article 101, paragraphs 2 and 3 envisaged and the organisational structure of the branch, which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 112;

c) the address, in the management company's host Member State from which documents may be obtained; and

d) the name of those responsible for the management of the branch.

(3) Unless the CSSF has reason to doubt the adequacy of the administrative structure or the financial situation of the management company, taking into account the activities envisaged, it shall, within two months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the management company's host Member State and shall inform the management company accordingly. It shall also communicate details of any compensation scheme intended to protect investors.

Where the CSSF refuses to communicate the information referred to in paragraph 2 to the competent authorities of the management company's host Member State, it shall give reasons for such refusal to the management company concerned within two months of receiving all the information. The refusal or any failure to reply shall be subject to the right to apply to the courts of Luxembourg.

Where a management company wishes to pursue the activity of collective portfolio management referred to in Annex II, the CSSF shall enclose with the documentation sent to the competent authorities of the management company's host Member State an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

(4) A management company which pursues activities by a branch within the territory of the host Member State shall comply with the rules drawn up by the management company's host Member State pursuant to Article 14 of Directive 2009/65/EC.

(5) Before the branch of a management company starts business, the competent authorities of the management company's host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for supervising the compliance of the management company with the rules under their responsibility.

(6) On receipt of a communication from the competent authorities of the management company's host Member State or on the expiry of the period provided for in paragraph 5 without receipt of any communication from those authorities, the branch may be established and start business.

(7) In the event of a change in any particulars communicated in accordance with paragraph 2, point b), c) or d), a management company shall give written notice of that change to the CSSF and the competent authorities of its host Member State at least one month before implementing the change so that the CSSF may take a decision on the change under paragraph 3 and the competent authorities of the management company's host Member State may do so under paragraph 6 of Article 17 of Directive 2009/65/EC.

(8) In the event of a change in the particulars communicated in accordance with paragraph 3, sub-paragraph 1, the CSSF shall inform the competent authorities of the management company's host Member State accordingly.

The CSSF shall update the information contained in the attestation referred to in paragraph 3, sub-paragraph 3 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Art. 115

(1) Any management company authorised pursuant to this Chapter wishing to pursue the activities for which it has been authorised within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the CSSF:

a) the Member State within the territory of which the management company intends to operate; and

b) a programme of operations stating the envisaged activities and services referred to in Article 101, paragraphs 2 and 3 which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 112.

(2) The CSSF shall, within one month of receiving the information referred to in paragraph 1 forward it to the competent authorities of the management company's host Member State.

The CSSF shall also communicate details of any applicable compensation scheme intended to protect investors.

Where a management company wishes to pursue the activity of collective portfolio management as referred to in Annex II, the CSSF shall enclose with the documentation sent to the competent authorities of the management company's host Member State, an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

Notwithstanding Article 20 of Directive 2009/65/EC and Article 54, the management company may then start business in the management company's host Member State.

(3) A management company which pursues activities under the freedom to provide services shall comply with the rules drawn up by the CSSF pursuant to Article 111.

(4) Where the content of the information communicated in accordance with paragraph 1, point b) is amended, the management company shall give notice of the amendment in writing to the CSSF and the management company's host Member State before implementing the change. The CSSF shall update the information contained in the attestation referred to in paragraph 2 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Art. 116

(1) A management company authorised pursuant to this Chapter which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with this Law as it relates to its organisation, including delegation arrangements, risk-management procedures, prudential rules and supervision, procedures referred to in Article 109 and the management company's reporting requirements.

(2) The CSSF shall be responsible for supervising compliance with paragraph 1.

(3) A management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or in accordance with the freedom to provide services shall comply with the rules of the UCITS home Member State which relate to the constitution and functioning of the UCITS, namely the rules applicable to:

a) the setting up and authorisation of the UCITS;

b) the issuance and redemption of units;

c) investment policies and limits, including the calculation of total exposure and leverage;

d) restrictions on borrowing, lending and uncovered sales;

e) the valuation of assets and the accounting of the UCITS;

f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

g) the distribution or reinvestment of income;

h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

i) the arrangements made for marketing;

j) the relationship with unitholders;

k) the merging and restructuring of the UCITS;

l) the dissolution and liquidation of the UCITS;

m) where applicable, the content of the unitholder register;

n) the licensing and supervision fees regarding the UCITS; and

o) the exercise of unitholders' voting rights and other unitholders' rights in relation to points a) to m).

(4) The management company shall comply with the obligations set out in the management regulations or in the instruments of incorporation, and the obligations set out in the prospectus.

(5) The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the management regulations or in the instruments of incorporation, and with the obligations set out in the prospectus.

(6) The CSSF shall be responsible for supervising the adequacy of the arrangements and organisation of the management company so that the management company is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the UCITS it manages.

Art. 117

(1) A management company pursuant to this Chapter which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation:

a) the written contract with the depositary referred to in Article 22, paragraph 2, of Directive 2009/65/EC; and

b) information on delegation arrangements regarding functions of investment management and administration referred to in Annex II.

If a management company already manages other UCITS of the same type in the UCITS home Member State, reference to the documentation already provided shall be sufficient.

(2) The competent authorities of the UCITS home Member State may ask the CSSF for clarification and information regarding the documentation referred to in paragraph 1 and, based on the attestation referred to in Articles 114, paragraph 3, third sub-paragraph and 115, paragraph 2, third sub-paragraph, as to whether the type of UCITS for which authorisation has been requested falls within the scope of the management company's authorisation. The CSSF shall provide its opinion within ten working days of the initial request.

(3) Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the competent authorities of the UCITS home Member State.

Art. 118

(1) A management company's host Member State may require management companies pursuing business within its territory under Directive 2009/65/EC to provide the information necessary for the monitoring of their compliance with the rules under the responsibility of the management company's host Member State that apply to them.

Management companies shall ensure that the procedures and arrangements referred to in Article 112 enable the competent authorities of the UCITS home Member State to obtain directly from the management company the information referred to in this paragraph.

(2) Where the competent authorities of a management company's host Member State ascertain that this management company is in breach of one of the rules under their responsibility, those authorities shall require the management company concerned to put an end to that breach and inform the CSSF.

(3) If the management company concerned refuses to provide the management company's host Member State with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph 1, the competent authorities of the management company's host Member State shall inform the CSSF accordingly. The CSSF shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the management company's host Member State pursuant to paragraph 1 or puts an end to the breach. The nature of those measures shall be communicated to the competent authorities of the management company's host Member State.

(4) If, despite the measures taken by the CSSF, the management company continues to refuse to provide the information requested by the management company's host Member State pursuant to paragraph 1, or persists in breaching the legal or regulatory provisions referred to in the same paragraph, the competent authorities of the management company's host Member State may, after informing the CSSF, take appropriate measures, including under Articles 98 and 99 of Directive 2009/65/EC, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction within its territory. Where the service provided within the management company's host Member State is the management of a UCITS, the management company's host Member State may require the management company to cease managing that UCITS.

(5) Any measure adopted pursuant to paragraphs 3 or 4 involving measures or penalties shall be duly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

II. Freedom of establishment and freedom to provide services in Luxembourg by a management company authorised under Directive 2009/65/EC in another Member State

Art. 119

(1) A management company authorised by the competent authorities of another Member State under Directive 2009/65/EC may pursue in Luxembourg the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

(2) The establishment of a branch or the provision of the aforementioned services is not subject to any authorisation requirement or to any requirement to provide endowment capital or to any other measure having equivalent effect.

(3) Within the limits thus provided, a UCITS established in Luxembourg shall be free to designate, or to be managed by a management company authorised in another Member State under Directive 2009/65/EC, in accordance with the provisions of Article 16, paragraph (3) of Directive 2009/65/EC.

Art. 120

(1) A management company authorised in another Member State wishing to establish a branch in Luxembourg to pursue the activities for which it has been authorised shall notify the competent authorities of its home Member State in accordance with the provisions of Article 17 of Directive 2009/65/EC.

The competent authorities of the home Member State shall notify to the CSSF the information referred to in Article 17, paragraph (2) of Directive 2009/65/EC within two months of receiving the same.

Where a management company wishes to pursue the activity of collective portfolio management, this notification shall include an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any possible restriction on the types of UCITS that the management company is authorised to manage.

(2) The management company shall comply with Article 111. The CSSF shall be responsible for supervising compliance with this provision.

(3) The CSSF shall within two months of receiving the information referred to in Article 17 of Directive 2009/65/EC prepare for supervising the compliance of the management company with the rules under its responsibility.

(4) On receipt of a communication from the CSSF or on the expiry of the period provided for in paragraph 3 without receipt of any communication from the latter, the branch may be established and start business.

(5) In the event of change of any particulars communicated in accordance with Article 17, paragraph (2) of Directive 2009/65/EC, the management company shall give written notice of that change to the competent authorities of the management company's home Member State and to the CSSF, at least one month before implementing the change, so that the competent authorities of the management company's home Member State and the CSSF may take a decision on the change in accordance with discharging their responsibilities under Directive 2009/65/EC and this Law respectively.

Art. 121

(1) A management company wishing to pursue the activities for which it has been authorised in another Member State for the first time in Luxembourg under the freedom to provide services shall communicate this to the competent authorities of the management company's home Member State in accordance with the provisions of Article 18 of Directive 2009/65/EC.

(2) The competent authorities of the management company's home Member State shall, within one month of receiving the information referred to in the abovementioned Article, communicate it to the CSSF. Where a management company wishes to pursue the activity of collective portfolio management, this shall include an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

(3) Notwithstanding Articles 20 and 93 of Directive 2009/65/EC, the management company may then start business in Luxembourg.

(4) The management company shall comply with the rules drawn up pursuant to Article 14 of Directive 2009/65/EC.

(5) In the event of a change in any particulars communicated in accordance with Article 18, paragraph (1), point (b) of Directive 2009/65/EC, the management company shall give written notice of that change to the competent authorities of the management company's home Member State and of the CSSF before implementing the change.

Art. 122

(1) A management company which pursues the activity of collective portfolio management in Luxembourg on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with the rules of the management company's home Member State which relate to the organisation of the management company, including delegation arrangements, risk-management procedures, prudential rules and supervision, procedures referred to in Article 12 of Directive 2009/65/EC and the management company's reporting requirements.

(2) The management company referred to in paragraph 1 shall comply with the rules in force in Luxembourg as regards the constitution and functioning of the UCITS, in particular the rules applicable to:

a) the setting up and authorisation of the UCITS;

b) the issuance and redemption of units;

c) investment policies and limits, including the calculation of total exposure and leverage;

d) restrictions on borrowing, lending and uncovered sales;

e) the valuation of assets and the accounting of the UCITS;

f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

g) the distribution or reinvestment of income;

h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

i) the arrangements made for marketing;

j) the relationship with unitholders;

k) the merging and restructuring of the UCITS;

l) the dissolution and liquidation of the UCITS;

m) where applicable, the content of the unitholder register;

n) the licensing and supervision fees regarding the UCITS; and

o) the exercise of unitholders' voting rights and other unitholders' rights in relation to points a) to m).

(3) The management company shall comply with the obligations set out in the management regulations or in the instruments of incorporation, and the obligations set out in the prospectus.

(4) The CSSF shall be responsible for supervising compliance with paragraphs 2 and 3.

(5) The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the management regulations or in the instruments of incorporation, as well as with the obligations set out in the prospectus.

Art. 123

(1) Notwithstanding Article 129, a management company which applies to manage a UCITS established in Luxembourg shall provide the CSSF with the following documentation:

a) the written contract with the depositary, referred to in Articles 17 and 33; and

b) any information on delegation arrangements, regarding functions of investment management and administration referred to in Annex II of this Law.

If a management company already manages other UCITS of the same type in Luxembourg, reference to the documentation already provided shall be sufficient.

(2) In so far as it is necessary, the CSSF may ask the competent authorities of the management company's home Member State for clarification and information regarding the documentation referred to in paragraph 1 of this Article and, based on the attestation referred to in Articles 120, paragraph 1 and 121, paragraph 2, to verify as to whether the type of UCITS for which authorisation has been requested falls within the scope of the management company's authorisation.

(3) The CSSF may refuse the application of the management company only if:

a) the management company does not comply with the rules falling under its responsibility pursuant to Article 122;

b) the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested; or

c) the management company has not provided the documentation referred to in paragraph 1.

Before refusing an application, the CSSF shall consult the competent authorities of the management company's home Member State.

(4) Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the CSSF.

Art. 124

(1) For statistical purposes, a management company with a branch in Luxembourg shall report periodically on its activities in Luxembourg to the CSSF.

(2) The management company which pursues activities in Luxembourg through the establishment of a branch or under the freedom to provide services, has to provide the CSSF with the information necessary for the monitoring of the management company's compliance with the rules under the responsibility of the CSSF that apply to it.

The management company shall ensure that the procedures and arrangements referred to in Article 15 of Directive 2009/65/EC enable the CSSF to obtain the information referred to in this paragraph directly from the management company.

(3) Where the CSSF ascertains that a management company that has a branch or provides services in Luxembourg, is in breach of one of the rules under its responsibility, it shall require the management company concerned to put an end to that breach and inform the competent authorities of the management company's home Member State thereof.

(4) If the management company concerned refuses to provide the CSSF with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph 3, the CSSF shall inform the competent authorities of the management company's home Member State accordingly. The competent authorities of the management company's home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the CSSF pursuant to paragraph 2 or puts an end to the breach. The nature of those measures shall be communicated to the CSSF.

(5) If, despite the measures taken by the competent authorities of the management company's home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company continues to refuse to provide the information requested by the CSSF pursuant to paragraph 2, or persists in breaching the legal or regulatory provisions, referred to in the same paragraph, in force in Luxembourg, the CSSF may, after informing the competent authorities of the management company's home Member State, take appropriate measures, including under Articles 147 and 148, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transactions in Luxembourg.

Where the service provided is the management of a UCITS, the CSSF may require the management company to cease managing that UCITS.

If the CSSF considers that the competent authority of the management company's home Member State has not acted adequately, it may refer the matter to the European Securities and Markets Authority.

(6) Any measure adopted pursuant to paragraph 4 or 5 involving measures or penalties shall be duly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in Luxembourg.

(7) Before following the procedure laid down in paragraph 3, 4 or 5, the CSSF may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission of the European Union, the European Securities and Markets Authority and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission of the European Union may decide that the CSSF must amend or abolish those measures.

(8) The competent authorities of the management company's home Member State shall consult the CSSF before withdrawing the authorisation of the management company. In such case, the CSSF shall take appropriate measures to safeguard investors' interests. Those measures may include decisions preventing the management company concerned from initiating any further transactions in Luxembourg.

Title E. – Management companies belonging to a financial conglomerate

Art. 124-1

Without prejudice to the provisions relating to monitoring provided by this Law, if a management company authorised under this Chapter is part of a financial conglomerate within the meaning of Article 2, point 14, of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, it is also submitted to the supplementary supervision undertaken by the CSSF as per the provisions provided for in Part II[26], Chapter 3*ter*, of the amended Law of 5 April 1993 on the financial sector.

Chapter 16 – Other management companies

Art. 125-1

(1) Access to the business of a management company within the meaning of this Chapter is subject to prior authorisation by the CSSF.

The management company shall be incorporated as a public limited company, a private limited company, a cooperative company, a cooperative company set up as a public limited company or a corporate partnership limited by shares. The capital of the company must be represented by registered shares. The provisions of the amended Law of 10 August 1915 concerning commercial companies are applicable to management companies falling within the scope of this Chapter, insofar as this Law does not derogate therefrom.

Authorised management companies shall be entered by the CSSF on a list. That entry shall be tantamount to authorisation and shall be notified by the CSSF to the management company concerned. Applications for entry on the list must be filed with the CSSF before the incorporation of the management company. The incorporation of the management company can only be undertaken after notification of the authorisation by the CSSF. This list and any modifications made thereto are published in the *Mémorial* by the CSSF.

Without prejudice to the application of Article 125-2, management companies authorised pursuant to this Article can only engage in the following activities:

a) ensure the management of investment vehicles other than AIFs within the meaning of Directive 2011/61/EU;

b) ensure the function of management company within the meaning of Article 89, paragraph 2, for one or more common funds which qualify as AIFs within the meaning of Directive 2011/61/EU or for one or more investment companies with variable capital or investment companies with fixed capital which qualify as AIFs within the meaning of Directive 2011/61/EU. In such case, the management company must appoint, on behalf of the common fund(s) and/or of the investment compan(y/ies) with variable capital or investment compan(y/ies) with fixed capital concerned, an external AIFM in accordance with point a) of Article 88-2, paragraph 2;

[26] The French version of the Law of 15 March 2016 refers to Part II instead of Part III.

c) ensure the management of one or more AIFs, whose assets under management do not exceed one of the thresholds provided for in Article 3, paragraph 2 of the Law of 12 July 2013 relating to alternative investment fund managers. In such case, the management companies concerned must:

- identify the AIFs they manage to the CSSF;

- provide information on the investment strategies of the AIFs that they manage to the CSSF;

- regularly provide the CSSF with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the CSSF to monitor systemic risk effectively.

Where the threshold conditions set out above are no longer met and where the management company concerned has not appointed an external AIFM within the meaning of point a) of Article 88-2, paragraph 2, or where the management company has chosen to be subject to the Law of 12 July 2013 relating to alternative investment fund managers, the management company concerned must apply to the CSSF for authorisation within thirty calendar days in accordance with the procedures laid down in Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers.

Under no circumstances shall management companies be authorised under this Article to only perform the services referred to in point a) without also performing the services referred to in points b) or c), unless the investment vehicles other than AIFs within the meaning of Directive 2011/61/EU, are regulated by specific sector laws which concern them.

The administration of the management companies' own assets must only be of an ancillary nature.

Both its head office and its registered office must be situated in Luxembourg.

Management companies falling within the scope of this Article performing the activities referred to in points a) or c) of the fourth sub-paragraph of this Article are authorised to delegate to third parties, for the purposes of a more efficient conduct of their activities, the power to carry out on their behalf, one or more of their functions. In that case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of the supervision over the management company; in particular, it must not prevent the management company from acting, or the UCI from being managed, in the best interests of the investors;

c) when the delegation concerns investment management, the mandate may only be given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; when the mandate is given to a third country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country must be ensured;

d) where the conditions of point c) are not fulfilled, the delegation can only become effective after prior approval of the CSSF; and

e) no mandate regarding the core function of investment management shall be given to the depositary.

Management companies falling within the scope of this Article performing activities referred to under point b) of the fourth sub-paragraph of this Article are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the power to carry out on

their behalf, one or more of their functions of administration and marketing, to the extent that the external AIFM appointed by the management company concerned does not itself undertake the functions in question. In that case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of the supervision over the management company; in particular, it must not prevent the management company from acting, or the common fund, the investment company with variable capital or the investment company with fixed capital from being managed in the best interests of investors.

(2) The CSSF will grant authorisation to the company only on the following conditions:

a) it must have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular it must have a minimum paid-up capital of one hundred and twenty-five thousand euros (EUR 125,000); a CSSF regulation may raise that minimum amount to a maximum of six hundred and twenty-five thousand euros (EUR 625,000);

b) the funds referred to in paragraph 2 a) are to be maintained at the management company's permanent disposal and invested in its own interests;

c) the directors of the management company, within the meaning of Article 129, paragraph 5, must be of sufficiently good repute and have the professional experience required for the performance of their duties;

d) the identity of reference shareholders or members of the management company must be provided to the CSSF;

e) the application for authorisation must describe the organisational structure of the management company.

(3) The applicant shall be informed, within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given whenever authorisation is refused.

(4) A management company may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the management company, the granting of authorisation implies an obligation to notify the CSSF, spontaneously in writing and in complete, coherent and comprehensible manner, of any change regarding the substantial information upon which the CSSF based itself to examine the application for authorisation.

(5) The CSSF may withdraw the authorisation issued to a management company subject to this Chapter only where that company:

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Chapter for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) has seriously and/or systematically infringed the provisions adopted pursuant to this Law; or

e) falls within any of the other cases that provide for withdrawal in this Law.

(6) The management company may not make use of the assets of the UCIs it manages for its own needs.

(7) The assets of the UCIs under management do not form part of the estate in case of insolvency of the management company. They cannot be claimed by the creditors of the management company.

Art. 125-2

(1) Management companies authorised pursuant to this Article which, as appointed management company, manage one or more AIFs within the meaning of Directive 2011/61/EU, without having appointed an external AIFM within the meaning of point a) of Article 88-2, paragraph 2, must also, where the assets under management exceed one of the thresholds provided for in Article 3, paragraph 2 of the Law of 12 July 2013 relating to alternative investment fund managers, obtain prior authorisation from the CSSF as AIFM of an AIF under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers.

(2) Management companies referred to in this Article can only engage in the activities referred to in Annex I of the Law of 12 July 2013 relating to alternative investment fund managers as well as in the non-core activities referred to in Article 5, paragraph 4 of that Law.

(3) In relation to the AIFs that they manage pursuant to this Article, management companies, as appointed management company, are subject to all the rules provided for by the Law of 12 July 2013 relating to alternative investment fund managers, to the extent that these rules are applicable to them.

(4) The management of a UCI subject to Part II by a management company appointed as an AIFM within the meaning of this Article is subject, as the case may be, to the rules laid down in Articles 17, 18, 18*bis*, 19 and 20 or to Articles 33, 34, 34*bis*, 35 and 37.

Art. 126

(1) Article 104 of this Law is applicable to management companies falling within the scope of this Chapter.

(2) In the event of the voluntary liquidation of a management company, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

Art. 126-1

(1) The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of management companies, whose entry on (i) the list provided for in Article 125, paragraph 1 and, where applicable, (ii) the list provided for in Article 7, paragraph 1 of the Law of 12 July 2013 relating to alternative investment fund managers, has definitively been refused or withdrawn.

(2) The decision of the CSSF regarding the withdrawal from the lists referred to in paragraph 1 of this article shall, as from the notification thereof to the management company and until the decision has become final, *ipso jure* entail the suspension of any payment by this management company and prohibition, on penalty of nullity, of taking any measures other than protective measures, except with the authorisation of the CSSF.

Chapter 17 – Management companies other than those authorised by the competent authorities of another Member State in accordance with Directive 2009/65/EC, from Member States or third countries

Art. 127

(1) Management companies other than those authorised by the competent authorities of another Member State in accordance with Directive 2009/65/EC, from a Member State or a third country, wishing to establish a branch in Luxembourg, are subject to the same authorisation rules as management companies subject to Chapter 16.

(2) For the purposes of the preceding paragraph, compliance with the conditions required for authorisation is assessed in the context of the foreign establishment.

(3) The authorisation for the activity of a management company of UCIs shall not be granted to branches of foreign companies, unless these companies have own funds distinct from the assets of their members. The branch must in addition have at its permanent disposal an endowment capital or financial resources equivalent to those required for a management company under Luxembourg law pursuant to Chapter 16.

(4) The requirements of good repute and professional experience are extended to the directors of the branch. The branch must also have, instead of the condition relating to the central administration, an adequate administrative infrastructure in Luxembourg.

Chapter 18 – Exercise of the activity of a management company by multilateral development banks

Art. 128

The multilateral development banks listed in Annex VI, point 20, of Directive 2006/48/EC, as amended and which are permitted by their statute to provide the services of collective portfolio management, are authorised to manage UCIs for the purposes of Article 125-1.

The institutions referred to in the preceding sub-paragraph are required to provide the CSSF, in relation to UCIs under its supervision, the information required by the CSSF for the purposes of prudential supervision of the UCI(s) managed.

In case of UCIs managed by institutions referred to in the first sub-paragraph, which have the form of a common fund, the provisions of this Article shall only apply if the management regulations of the UCIs concerned are subject to Luxembourg law.

PART V: GENERAL PROVISIONS APPLICABLE TO UCITS AND OTHER UCIS

Chapter 19 – Authorisation

Art. 129

(1) UCIs subject to Articles 2, 87 and 100, paragraph (1) must, in order to carry out their activities in Luxembourg, be previously authorised by the CSSF pursuant to this Law.

A UCITS subject to Article 2 which is legally prevented from marketing its units in Luxembourg, in particular by a provision included in the management regulations or the instruments of incorporation, will not be authorised by the CSSF.

(2) A UCI shall be authorised only if the CSSF has approved the instruments of incorporation and the management regulations respectively and the choice of the depositary.

(2*bis*) In addition to the conditions provided for in paragraph 2, and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, a UCI subject to Part II shall only be authorised if its external AIFM, appointed in

accordance with point a) of Article 88-2, paragraph 2, has been previously authorised in accordance with that Article.

A UCI subject to Part II, which is internally managed within the meaning of point b) of Article 88-2, paragraph 2 must, in addition to the authorisation required pursuant to Article 129, paragraph 1 of this Law, and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, be authorised in accordance with point b) of Article 88-2, paragraph 2.

(3) In addition to the conditions laid down in paragraph 2, a UCITS within the scope of Article 2 shall not be authorised by the CSSF unless it fulfils the following conditions:

a) A common fund shall be authorised only if the CSSF has approved the application of the management company to manage that common fund. An investment company having designated a management company shall be authorised only if the CSSF has approved the application of the management company designated to manage that investment company.

b) Without prejudice to sub-paragraph a), if the UCITS which is established in Luxembourg is managed by a management company subject to Directive 2009/65/EC and which has been authorised by the competent authorities of another Member State pursuant to Directive 2009/65/EC, the CSSF shall decide on the application of the management company to manage the UCITS in accordance with Article 123.

(4) The CSSF may refuse to authorise a UCITS within the scope of Article 2 if:

a) it establishes that the investment company does not comply with the preconditions laid down in Chapter 3; or

b) the management company is not authorised to manage a UCITS pursuant to Chapter 15, or

c) the management company is not authorised to manage a UCITS in its home Member State.

Without prejudice to Article 27, paragraph 1, the management company or, where applicable, the investment company shall be informed within two months of the submission of a complete application whether or not the authorisation of the UCITS has been granted.

(5) The directors of the UCI and of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of UCI concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons who under law or the instruments of incorporation represent the UCI or the depositary or who effectively determine the conduct of the activity of the UCI.

(6) The replacement of the management company, the AIFM or the depositary and the amendment of the management regulations or the instruments of incorporation of the investment company are subject to approval by the CSSF.

(7) The granting of the authorisation pursuant to paragraph 1 of this article implies that the members of the administrative, management and supervisory bodies of the management company, the AIFM or, where applicable, the investment company, are obliged to notify the CSSF spontaneously in writing and in a complete, coherent and comprehensible manner of any change regarding the substantial information on which the CSSF based itself to examine the application for authorisation as well as any change in respect of the directors referred to in paragraph 5 above.

Art. 130

(1) Authorised UCIs shall be entered by the CSSF on a list. That entry shall be tantamount to authorisation and shall be notified by the CSSF to the UCI concerned. For the UCIs referred to in Articles 2 and 87, applications for entry on the list must be filed with the CSSF within the month following their incorporation or formation. This list and any amendments made thereto shall be published in the *Mémorial* by the CSSF.

(2) The entering and the maintaining on the list referred to in paragraph 1 shall be subject to observance of all the provisions of laws, regulations or agreements relating to the organisation and operation of UCIs and the distribution, placing or sale of their units.

Art. 131

Luxembourg UCIs other than of the closed-ended type, UCITS governed by harmonised Community law and foreign UCIs in case of a public offer in Luxembourg shall be exempt from publishing a prospectus as provided for in Part III of the Law on prospectuses for transferable securities. The prospectus which those UCIs draw up in accordance with the regulatory requirements applicable to UCIs shall be valid for the purposes of an offer to the public of transferable securities or the admission of transferable securities to trading on a regulated market.

Art. 132

The fact that a UCI has been entered on the list referred to in Article 130, paragraph 1 shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the quality of the units offered for sale.

Chapter 20 – Organisation of supervision

A. – Competent authority for supervision

Art. 133

(1) The authority which is to carry out the duties provided for in this Law is the CSSF.

(2) The CSSF carries out its duties exclusively in the interest of the public.

(3) The CSSF has jurisdiction to settle any consumer disputes concerning the activity of UCIs governed by this Law through out-of-court procedures.

Art. 134

(1) Any person who works or who has worked for the CSSF, as well as the approved statutory auditors or experts mandated by the CSSF, shall be bound by the obligation of professional secrecy provided for by Article 16 of the Law of 23 December 1998 creating a commission for the supervision of the financial sector, as amended. Such secrecy implies that confidential information which they may receive in the course of their duties may not be divulged to any person or authority whatsoever, save in summary or abridged form such that no UCIs, management company or depositary can be individually identified, without prejudice to cases covered by criminal law.

However, when a UCI or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern the third parties involved in rescue attempts may be divulged in the course of civil or commercial proceedings.

(2) Paragraph 1 shall not prevent the CSSF from exchanging information with the supervisory authorities of other Member States of the European Union within the limits provided by this Law or from transmitting this information to the European Securities and Markets Authority in accordance with Regulation (EU) No. 1095/2010 or to the European Systemic Risk Board.

The supervisory authorities of countries, other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the supervisory authorities of Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(3) Paragraph 1 shall not prevent the CSSF from exchanging information with:

- authorities of third countries with public responsibilities for the prudential supervision of UCIs,

- other authorities, bodies and persons referred to in paragraph 5, with the exception of central credit registers established in third countries,

- authorities of third countries referred to in paragraph 6.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information must be required for the purpose of performing the duty of the recipient authorities, bodies and persons,

- the information received must be subject to the professional secrecy of the recipient authorities, bodies and persons, and the professional secrecy of these authorities, bodies and persons must offer guarantees at least equivalent to the professional secrecy to which the CSSF is bound,

- the authorities, bodies and persons which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof,

- the authorities, bodies and persons who receive information from the CSSF grant the same right of information to the CSSF,

- the CSSF may only disclose information received from EU authorities responsible for the prudential supervision of UCIs with the express consent of those authorities and, where appropriate, solely for the purposes for which those authorities gave their consent.

For the purpose of this paragraph, third countries are countries other than those referred to in paragraph 2.

(4) Where the CSSF receives confidential information under paragraphs 2 and 3, it may use it only in the course of its duties for the purposes of:

- checking that the conditions governing the taking-up of the business of UCITS, of management companies, depositaries and of any other undertaking contributing towards their business activity are met and facilitating the monitoring of the conduct of that business, of administrative and accounting procedures as well as of internal control mechanisms; or

- imposing penalties; or

- conducting administrative appeals against decisions by the CSSF; or

- pursuing court proceedings initiated against decisions taken by the CSSF under this Law.

(5) Paragraphs 1 and 4 shall not preclude:

a) the exchange of information within the European Union or in Luxembourg between the CSSF and:

- authorities with public responsibility for the supervision of credit institutions, investment firms, insurance undertakings and other financial institutions and the authorities responsible for the supervision of financial markets,

- bodies involved in the liquidation, bankruptcy or other similar proceedings concerning UCIs, management companies and depositaries or other undertakings contributing towards their business activity,

- persons responsible for carrying out statutory audits of the accounts of credit institutions, investment firms, other financial institutions or insurance undertakings,

- the European Securities and Markets Authority, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board,

in the performance of their functions,

b) the disclosure by the CSSF within the European Union or in Luxembourg to bodies which administer compensation schemes of investors or to central credit registers of information necessary for the performance of their functions.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities, bodies and persons receiving the information and is only authorised to the extent that the professional secrecy of those authorities, bodies and persons offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(6) Paragraphs 1 and 4 do not prevent exchanges of information within the European Union or in Luxembourg between the CSSF and:

- the authorities responsible for overseeing the bodies involved in the liquidation, bankruptcy and other similar proceedings concerning credit institutions, investment firms, insurance undertakings, UCIs, management companies and depositaries,

- the authorities responsible for overseeing persons entrusted with the carrying out of statutory audits of the accounts of credit institutions, investment firms, insurance undertakings and other financial institutions.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information is intended to be used for the purpose of performing the supervisory duty of the recipient authorities,

- the information received shall be subject to the professional secrecy of the recipient authorities and the professional secrecy of such authorities must offer guarantees at least equivalent to the professional secrecy of the CSSF,

- the authorities which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof,

- the CSSF may only disclose information received from supervisory authorities referred to in paragraphs 2 and 3 with the express consent of those authorities and, where appropriate, solely for the purposes for which those authorities gave their consent.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(7) This Article shall not prevent the CSSF from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their duties.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the recipient authorities and is only authorised to the extent that the professional secrecy of those authorities offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

This Article shall furthermore not prevent the authorities or bodies referred to in this paragraph from communicating to the CSSF any such information as it may require for the purposes of paragraph 4. Information received in this context by the CSSF shall be subject to its professional secrecy.

(8) This Article shall not prevent the CSSF from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar undertaking recognised under law for the provision of clearing or settlement services for a market in Luxembourg if the CSSF considers it is necessary to communicate such information in order to ensure the proper functioning of those undertakings in relation to defaults or potential defaults by market participants.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that any such information is covered by the professional secrecy of the recipient bodies and is only authorised to the extent that the professional secrecy of those undertakings offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, undertakings which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

The information received by the CSSF pursuant to paragraphs 2 and 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the supervisory authorities which have disclosed that information to the CSSF.

Art. 134*bis*

The treatment of personal data in application of this Law shall be carried out in accordance with the amended Law of 2 August 2002 relating to the protection of persons with regard to the processing of personal data.

B. – Cooperation with competent authorities of the other Member States

Art. 135

(1) The CSSF shall cooperate with the competent authorities of other Member States for the purpose of carrying out their duties under Directive 2009/65/EC or of exercising their powers under the aforementioned Directive or under national law.

The CSSF shall cooperate with the competent authorities of other Member States even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in Luxembourg.

(2) The CSSF shall provide the competent authorities of other Member States with the information required for the purposes of carrying out their duties under Directive 2009/65/EC without delay.

(2*bis*) The CSSF shall cooperate with the European Securities and Markets Authority for the purposes of Directive 2009/65/EC, in accordance with Regulation (EU) No. 1095/2010.

The CSSF shall provide the European Securities and Markets Authority, without delay, with all the information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No. 1095/2010.

(3) Where the CSSF has good reason to suspect that acts contrary to the provisions of Directive 2009/65/EC are being or have been carried out by entities not subject to its supervision on the territory of another Member State, it shall notify the competent authorities of the other Member State thereof in as specific a manner as possible.

(4) The competent authorities of a Member State may request the cooperation of the CSSF in a supervisory activity or for an on-the-spot verification or in an investigation in Luxembourg within the framework of their powers pursuant to Directive 2009/65/EC. Where the CSSF receives a request with respect to an on-the-spot verification or investigation, it shall:

a) carry out the verification or investigation itself;

b) allow the requesting competent authorities of the Member State to carry out the verification or investigation;

c) allow supervisory auditors or experts to carry out the verification or investigation.

(5) If the verification or investigation is carried out by the CSSF, the competent authorities of the Member State which have requested cooperation may request that their own officials accompany the officials of the CSSF carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the CSSF.

If the verification or investigation is carried out in Luxembourg by a competent authority of a Member State, the CSSF may request that its own officials accompany the officials carrying out the verification or investigation.

(6) The CSSF may refuse to exchange information as provided for in paragraph 2 or to act on a request for cooperation in carrying out an investigation or on-the-spot verification as provided for in paragraph 4, only where:

a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of Luxembourg;

b) judicial proceedings have already been initiated in respect of the same persons and the same actions before the authorities of Luxembourg;

c) final judgement in respect of the same persons and the same actions has already been delivered in Luxembourg.

d) compliance with the request is likely to affect adversely the investigation of the CSSF or, where applicable, an ongoing criminal investigation.

(7) The CSSF shall notify the requesting competent authorities of any decision taken under paragraph 6. Any such notification shall contain information about the reasons of the decision.

Art. 136

(1) The CSSF, in so far as a UCITS is established in Luxembourg, shall have the exclusive rights to take action against the UCITS if it infringes the laws, regulations or administrative provisions as well as the rules provided for by the management regulations or the instruments of incorporation of the investment company.

(2) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay by the CSSF to the authorities of the UCITS host Member State and, if the management company of a UCITS is established in another Member State, to the competent authorities of the management company's home Member State.

(3) The CSSF, as the competent authority of the UCITS home Member State, and the competent authorities of the management company's home Member State may take action against the management company if it infringes rules under their respective responsibility.

(4) The CSSF shall take the appropriate measures in the event that the competent authorities of the UCITS host Member State inform the CSSF that they have clear and demonstrable grounds for believing that a UCITS, the units of which are marketed within the territory of that Member State is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC which do not grant them powers.

Art. 137

(1) The CSSF may take actions against a UCITS, the units of which are marketed in Luxembourg if it infringes the laws, regulations or administrative provisions in force that fall outside the scope of this Law or the requirements set out in Articles 59 and 61.

(2) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay to the CSSF by the authorities of the UCITS home Member States. This information shall also be communicated to the CSSF if the management company of a UCITS is established in Luxembourg.

(3) The CSSF shall inform the competent authorities of the UCITS home Member State in the event that the CSSF has clear and demonstrable grounds for believing that such a UCITS is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC which do not confer powers on it.

(4) If, despite the measures taken by the competent authorities of the UCITS home Member State, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of investors in Luxembourg, the CSSF may:

a) after informing the competent authorities of the UCITS home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the UCITS concerned from carrying out any further marketing of its units in Luxembourg; or

b) if necessary, refer the matter to the European Securities and Markets Authority, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

The CSSF shall inform the Commission of the European Union and the European Securities and Markets Authority without delay of any measure taken pursuant to point a).

Art. 138

Where, through the provision of services or by the establishment of branches, a management company operates in one or more management company's host Member States, the CSSF shall collaborate closely with the competent authorities concerned.

It shall supply on request all the information concerning the management and ownership of that management company that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies.

Art. 139

(1) Where the CSSF is the competent authority of the management company, it cooperates in order to ensure the collection by the authorities of the management company's host Member State of the information referred to in Article 21, paragraph (2) of Directive 2009/65/EC.

(2) In so far as it is necessary for the purpose of exercising its powers of supervision, as the management company's home Member State competent authority, the competent authorities of the management company's host Member State shall inform the CSSF of any measures taken by them pursuant to Article 21, paragraph (5) of Directive 2009/65/EC which involves measures or penalties imposed on a management company or restrictions on a management company's activities.

(3) The CSSF, as the competent authority of the management company, shall, without delay, notify the competent authorities of the home Member State of the UCITS of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach of the requirements under Chapter 15.

(4) The CSSF shall be informed by the competent authorities of the UCITS home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements under Directive 2009/65/EC which fall under the responsibility of the UCITS home Member State.

Art. 140

Where the UCITS is established in Luxembourg, the CSSF shall, without delay, notify the competent authorities of the management company's home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements under this Law, which fall under the responsibility of the CSSF.

Art. 141

(1) Where a management company authorised in another Member State pursues its business in Luxembourg through the provision of services or through a branch, insofar as this is necessary for the purpose of exercising the powers of supervision, the CSSF shall inform the competent authorities of the management company's home Member State, of any measures taken by the CSSF pursuant to Article 124, paragraph 5 which involve measures or penalties imposed on a management company or restrictions on a management company's activities.

(2) Where a management company authorised in another Member State pursues its business within the territory of Luxembourg through a branch, the CSSF shall ensure that the competent authorities of the management company's home Member State may, after having informed the CSSF, carry out themselves or through the intermediary they instruct on-the-spot verification of the information referred to in Article 109 of Directive 2009/65/EC.

(3) Paragraph 2 shall not affect the right of the CSSF in discharging its duties under this Law, to carry out on-the-spot verifications of branches established in Luxembourg.

C. – Supervisory powers and powers of sanction

Art. 142

(1) The decisions to be adopted by the CSSF in implementation of this Law shall state in writing the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case. They shall be notified by registered letter or delivered by bailiff.

(2) The decisions by the CSSF concerning the granting, refusal or withdrawal of the authorisations provided for in this Law as well as the decisions of the CSSF regarding administrative sanctions and other administrative measures within the meaning of Article 148 may be referred to the administrative court which will deal with the substance of the case. The case must be filed within one month from the date of notification of the contested decision, or else shall be time-barred.

(3) The decision of the CSSF withdrawing the name of a UCI referred to in Articles 2 and 87 from the list provided for in Article 130, paragraph 1, shall, as from the notification thereof to that undertaking and until the decision has become final, *ipso jure* entail for that undertaking suspension of any payment by the undertaking and prohibition for that undertaking, on pain of nullity, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner. The CSSF shall *ipso jure* hold the office of supervisory commissioner, unless at its request, the District Court dealing with commercial matters appoints one or more supervisory commissioners. The application, stating the reasons on which it is based and accompanied by supporting documents, shall be lodged for that purpose at the Registry of the District Court in the district within which the undertaking has its registered office.

The Court shall give its ruling within a short period.

If it considers that it has sufficient information, it shall immediately pronounce in open court, without hearing the parties. If it deems it necessary, it shall convene the parties by notification from the Registrar within three days from the lodging of the application. It shall hear the parties in chambers and give its decision in public session.

The written authorisation of the supervisory commissioners is required for all actions and decisions of the undertaking and, failing such authorisation, they shall be void.

The Court may, however, limit the scope of operations subject to authorisation.

The commissioners may submit for consideration to the relevant bodies of the undertaking any proposals which they consider appropriate. They may attend proceedings of the administrative body, management, executive or supervisory boards of the undertaking.

The Court shall decide as to the expenses and fees of the supervisory auditors; it may grant them advances.

The judgement provided for in paragraph 1 of Article 143 shall terminate the functions of the supervisory commissioner who must, within one month after his replacement, submit to the liquidators appointed in such judgement a report on the use of the undertaking's assets together with the accounts and supporting documents.

If the withdrawal decision is amended on appeal in accordance with paragraph 2 above, the supervisory commissioner shall be deemed to have resigned.

Art. 143

(1) The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of the UCIs referred to in Articles 2 and 87, whose entry on the list provided for in Article 130, paragraph 1 has finally been refused or withdrawn.

The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of one or more compartments of UCIs referred to in Article 2 and 87, in cases where the authorisation of this compartment has been refused or withdrawn.

When ordering the liquidation, the Court shall appoint a reporting judge and one or more liquidators. It shall determine the method of liquidation. It may render applicable, as far at it may determine, the rules governing liquidation in bankruptcy. The method of liquidation may be changed by subsequent decision, either at the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgement pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the undertaking, receive all payments, grant releases with or without discharge, realise all the transferable securities of the undertaking and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise on all claims. They may alienate immovable property of the undertaking by public auction.

They may also but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgement, no legal actions relating to movable or immovable property or any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgement ordering liquidation shall terminate all arrests effected at the request of unsecured creditors who are not secured by charges on movable and immovable property.

(4) After payment or deposit of the sums necessary for the discharge of the debts, the liquidators shall distribute to unitholders the sums or amounts due to them.

(5) The liquidators may convene, at their own initiative, and must convene at the request of unitholders representing at least one quarter of the assets of the undertaking, a general meeting of unitholders for the purpose of deciding whether, instead of an outright liquidation, it would be appropriate to contribute the assets of the undertaking in liquidation to another UCI. That decision shall be taken, provided that the general meeting is composed of a number of unitholders representing at least one half of the outstanding units or share capital of the undertaking, by a majority of two thirds of the votes of the unitholders present or represented.

(6) The Court's decisions pronouncing the dissolution and ordering the liquidation of a UCI shall be published in the *Recueil électronique des sociétés et associations* and in two newspapers with adequate circulation specified by the Court, at least one of which must be a Luxembourg newspaper. The Liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be responsible both towards third parties and to the UCI for the discharge of their duties and for any faults committed in the conduct of their activities.

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the assets of the undertaking and shall submit the accounts and supporting documents thereof. The Court shall appoint the supervisory auditors to examine the documents.

After receipt of the supervisory auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph 6 above.

That publication shall also indicate:

- the place designated by the Court where the books and records must be kept for at least five years;

- the measures taken in accordance with Article 145 with a view to the deposit of the sums and assets due to creditors, unitholders or members to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of UCIs, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph 9.

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of intentional concealment, five years after the discovery thereof.

(11) The provisions of this Article shall also apply equally to the UCIs which have not applied to be entered on the list provided for in Article 130, paragraph 1 within the time limit laid down therein.

Art. 144

(1) UCIs shall, after dissolution, be deemed to exist for the purpose of their liquidation. In the case of a non-judicial liquidation, they shall remain subject to supervision by the CSSF.

(2) All documents issued by a UCI in liquidation shall indicate that it is in liquidation.

Art. 145

(1) In the event of a non-judicial liquidation of a UCI, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

(2) Where a liquidator does not accept its appointment or is not approved, the District Court dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgement appointing the liquidator(s) shall be provisionally enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

Art. 146

In the event of a voluntary or compulsory liquidation of a UCI within the meaning of this Law, the sums and assets payable in respect of units whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office[27] to be held for the benefit of the persons entitled thereto.

Art. 147

(1) For the purposes of application of this Law, the CSSF is granted all supervisory and investigative powers that are necessary for the exercise of their functions.

(2) The powers of the CSSF shall include the right to:

a) access any document in any form and receive a copy thereof;

b) require any person to provide information and, if necessary, to summon and question any person with a view to obtaining information;

c) carry out on-site inspections or investigations, by itself or by its delegates, of persons subject to its supervision under this Law;

d) require existing recordings of telephone conversations or electronic communications or other data traffic records held by a UCI, a management company, an investment company, a depositary or any other entity governed by this Law;

e) require the cessation of any practice that is contrary to the provisions adopted in implementation of this Law;

f) request the freezing or the sequestration of assets by the president of the District Court of and in Luxembourg acting on request;

g) pronounce the temporary prohibition of exercising professional activities against the persons subject to its prudential supervision, as well as the members of administrative, governing and management bodies, employees and agents linked to these persons;

h) require authorised investment companies, management companies or depositaries to provide information;

i) adopt any type of measure to ensure that investment companies, management companies or depositaries continue to comply with the requirements of this Law;

j) require the suspension of the issue, repurchase or redemption of units in the interest of the unitholders or of the public;

k) withdraw the authorisation granted to a UCI, a management company or a depositary;

l) transmit information to the Public Prosecutor for criminal proceedings; and

m) instruct approved statutory auditors or experts to carry out verifications or investigations.

[27] *Caisse de Consignation*

(3) The judge presiding over the District Court dealing with commercial matters may, at the request of the organisations referred to in Article L. 313-1 and following of the Consumer Code enacted by the Law of 8 April 2011, or the CSSF, order any measure for the purpose of stopping any acts contrary to the provisions of this Law referred to in the second sub-paragraph of this paragraph. The action for an injunction is brought according to the procedure applicable to summary proceedings[28]. The judge presiding over the District Court dealing with commercial matters shall decide on the merits of the case. The appeal period is fifteen days.

The acts referred to in the first sub-paragraph are the following:

a) the fact of performing or having performed activities of collection of savings from the public in view of their placement without the UCI having been entered on the list referred to in Article 130;

b) the fact of performing activities of a management company of UCIs without being authorised in accordance with the provisions of Chapter 15, 16 or 17;

c) the fact of making use of a designation or of a description giving the impression of activities being subject to this Law without having obtained the authorisation provided for in Article 130.

Art. 148

(1) The CSSF is competent to impose the administrative sanctions and other administrative measures listed in paragraph 4 on:

- UCIs subject to Part I and Part II, their management companies, their depositaries as well as any undertaking contributing towards the activities of the UCI which is subject to the supervision of the CSSF;

- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who conduct the business of such entities within the meaning of Article 129, paragraph 5;

- the liquidators in case of voluntary liquidation of a UCI,

in the following cases:

a) the refusal to provide accounting documents or other requested information, necessary for the CSSF for the purpose of applying this Law;

b) the provision of documents or other information which prove to be incomplete, inaccurate or false;

c) if the exercise of the powers of inspection and the supervisory and investigatory powers of the CSSF are obstructed;

d) the non-compliance with the rules governing the publication of balance sheets and financial situations;

e) the failure to comply with the injunctions of the CSSF pronounced by the CSSF by virtue of paragraph 4, point b);

f) a behaviour that is likely to put at risk the sound and prudent management of the undertaking concerned;

[28] *Tribunal des référés*

g) the non-compliance with the provisions of Article 132.

(2) Without prejudice to the provisions set forth in paragraph 1, the CSSF is competent to impose the administrative sanctions and other administrative measures listed in paragraph 4 on:

- UCITS subject to Part I, their management companies, their depositaries;

- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who effectively conduct the business of such entities within the meaning of Article 129, paragraph 5,

in the following cases:

a) where a qualifying holding in a management company subject to Chapter 15 is acquired, directly or indirectly, or such a qualifying holding in a management company is further increased so that the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the management company would become its subsidiary (hereafter "proposed acquisition"), without notifying in writing the CSSF of the management company in which the acquirer is seeking to acquire or increase a qualifying holding, in violation of Article 108, paragraph 1;

b) where a qualifying holding in a management company subject to Chapter 15 is disposed of, directly or indirectly, or reduced, so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50%, or so that the management company would cease to be a subsidiary, without notifying in writing the CSSF, in violation of Article 108, paragraph 1;

c) where a management company subject to Chapter 15 has obtained an authorisation through false statements or any other irregular means, in violation of Article 102, paragraph 5, point b);

d) where an investment company within the meaning of Article 27 has obtained an authorisation through false statements or any other irregular means, in violation of Article 27, paragraph 1;

e) where a management company subject to Chapter 15, on becoming aware of any acquisition or disposal of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 11, paragraph 1, of Directive 2014/65/EU, fails to inform the CSSF of those acquisitions or disposals, in violation of Article 108, paragraph 1;

f) where a management company subject to Chapter 15 fails to inform the CSSF, at least once a year, of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings, in violation of Article 108, paragraph 1;

g) where a management company subject to Chapter 15 fails to comply with procedures and arrangements imposed in accordance with the provisions of Article 109, paragraph 1, point a);

h) where a management company subject to Chapter 15 fails to comply with the structural and organisational requirements imposed in accordance with the provisions of Article 109, paragraph 1, point b);

i) where an investment company within the meaning of Article 27 fails to comply with the procedures and arrangements imposed in accordance with Article 27, paragraph 3;

j) where a management company subject to Chapter 15 or an investment company within the meaning of Article 27 fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 110;

k) where a management company subject to Chapter 15 or an investment company within the meaning of Article 27 fails to comply with the rules of conduct imposed in accordance with the provisions of Article 111 ;

l) where a depositary fails to perform its tasks in accordance with Articles 18, paragraphs 1 to 5, or 34, paragraphs 1 to 5;

m) where an investment company within the meaning of Article 27 or, for each of the common funds that it manages, a management company subject to Chapter 15 repeatedly fails to comply with obligations concerning the investment policies laid down in the provisions of Chapter 5;

n) where a management company subject to Chapter 15 or an investment company within the meaning of Article 27 fails to employ a risk-management process or a process for accurate and independent assessment of the value of OTC derivatives as laid down in the provisions of Article 42, paragraph 1;

o) where an investment company within the meaning of Article 27 or, for each of the common funds that it manages, a management company subject to Chapter 15 repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with the provisions of Articles 47 and 150 to 163;

p) where a management company subject to Chapter 15 marketing units of a UCITS that it manages in another Member State, or an investment company within the meaning of Article 27, marketing its units in another Member State fails to comply with the notification requirement laid down in Article 54, paragraph 1.

(3) Without prejudice to the provisions set forth in paragraph 1, the CSSF is competent to impose the administrative sanctions and other administrative measures listed in paragraph 4 on:

- UCIs subject to Part II, their management companies, their depositaries;

- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who effectively conduct the business of such entities within the meaning of Article 129, paragraph 5,

in the following cases:

a) where a management company subject to Chapter 16 has obtained an authorisation through false statements or any other irregular means, in violation of Article 125-1, paragraph 5, point b);

b) where a management company subject to Chapter 16 fails to comply with requirements related to delegation of its functions to third parties in accordance with the provisions of Article 125-1;

c) where a SICAV subject to Chapter 12 fails to comply with requirements related to delegation of its functions to third parties in accordance with the provisions of Article 95, paragraphs 2 and 3;

d) where a UCITS which does not have the legal form of a common fund or a SICAV subject to Chapter 13 does not comply with the requirements related to delegation of its functions to third parties in accordance with the provisions of Article 99, paragraphs 6*bis* and 6*ter* ;

e) where a UCI or its management company repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with Articles 150 to 158;

f) where a depositary fails to perform its tasks in accordance with the provisions of Articles 18, paragraphs 1 to 5, or 34, paragraphs 1 to 5 ;

g) where a management company subject to Article 125-2 has obtained an authorisation as AIFM of AIFs through false statements or any other irregular means, thus infringing Article 10, paragraph 1, point b), of the amended Law of 12 July 2013 relating to alternative investment fund managers;

h) where a management company subject to Article 125-2 fails to comply with the organisational requirements imposed in accordance with Articles 16 and 17 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

i) where a management company subject to Article 125-2 fails to comply with the procedures and measures for protection against conflicts of interests imposed in accordance with the provisions of Article 13 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

j) where a management company subject to Article 125-2 fails to comply with the rules of conduct imposed in accordance with the provisions of Article 11, paragraph 1, of the amended Law of 12 July 2013 relating to alternative investment fund managers;

k) where a management company subject to Article 125-2 fails to comply with the risk management procedures and systems imposed in accordance with the provisions of Article 14 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

l) where a management company subject to Article 125-2 fails to comply with the requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 18 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

m) where a management company subject to Article 125-2 repeatedly fails to comply, for each of the AIFs that it manages, with obligations concerning information to be provided to investors imposed in accordance with the provisions of Articles 20 to 21 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

n) where a management company subject to Article 125-2, marketing units of an AIF that it manages in another Member State fails to comply with the notification requirement laid down in Article 30 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

(4) In the cases referred to in paragraphs 1 to 3, the CSSF may impose the following administrative penalties and other administrative measures:

a) a public statement which identifies the person responsible and the nature of the violation of the law;

b) an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct;

c) in the case of a UCI or a management company, suspension or withdrawal of the authorisation of the UCI or the management company;

d) a temporary or, for repeated serious violations of the law, a permanent ban against a member of the management body of the management company or the UCI or against any other natural person employed by the management company or the UCI who is held responsible, from exercising management functions in those or in other such entities;

e) in the case of a legal person, a maximum fine of 5,000,000 euros or a maximum amount of 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

f) in the case of a natural person, a maximum fine of 5,000,000 euros;

g) as an alternative to points e) and f), a maximum fine of at least twice the amount of the benefit derived from the violation of the law where that benefit can be determined, even if that exceeds the maximum amounts in points e) and f).

Art. 149

(1) The CSSF shall publish on its website any decision against which there is no appeal imposing an administrative sanction or measure for infringements of the provisions of this Law without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. This obligation does not apply to decisions imposing measures that are of an investigatory nature.

However, where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the CSSF to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, the CSSF shall:

a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist;

b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with applicable law, if such anonymous publication ensures effective protection of the personal data concerned; or

c) not publish the decision to impose a sanction or measure in the event that the options laid down in points a) and b) are considered to be insufficient to ensure:

i) that the stability of the financial markets would not be put in jeopardy;

ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case the CSSF decides to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

(2) Where the decision to impose a sanction or measure is subject to appeal, the CSSF shall also publish immediately on its official website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

(3) Any publication of a sanction or a measure in accordance with this Article shall remain on the website of the CSSF for a minimum period of five years and a maximum period of ten years from its publication.

(4) In accordance with Article 99e, paragraph 2, of Directive 2009/65/EC, where the CSSF has disclosed administrative penalties or measures to the public relating to a UCITS, a management company or a depositary of a UCITS, it shall simultaneously report those administrative penalties or measures to the European Securities and Markets Authority.

Furthermore, the CSSF shall inform the European Securities and Markets Authority of any administrative penalties imposed but not published, in accordance with paragraph 1, point c), including any appeal in relation thereto and the outcome of such an appeal.

Art. 149*bis*

Where the CSSF determines the type of administrative penalties or measures and the level of fines, it shall ensure that they are effective, proportionate and dissuasive and take into account all relevant circumstances, including, where appropriate:

a) the gravity and the duration of the infringement;

b) the degree of responsibility of the person responsible for the infringement;

c) the financial strength of the person responsible for the infringement, as indicated, for example, by its total turnover in the case of a legal person or the annual income in the case of a natural person;

d) the importance of the profits gained or losses avoided by the person responsible for the infringement, the damage to other persons and, where applicable, the damage to the functioning of markets or the wider economy, in so far as they can be determined;

e) the level of cooperation of the person responsible for the infringement with the CSSF;

f) previous infringements by the person responsible for the infringement;

g) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

Art. 149*ter*

(1) The CSSF shall establish effective and reliable mechanisms to encourage the reporting of potential or actual infringements of the provisions of this Law, including secure communication channels for reporting such infringements.

(2) The mechanisms referred to in paragraph 1 shall include at least:

a) specific procedures for the receipt of reports on infringements and their follow-up;

b) appropriate protection for employees of UCIs, management companies, depositaries as well as any undertaking contributing towards the activities of the UCI which is subject to supervision by the CSSF who report infringements committed within those entities, at least against retaliation, discrimination and other types of unfair treatment;

c) the protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with the amended Law of 2 August 2002 relating to the protection of persons with regard to the processing of personal data;

d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports an infringement, unless disclosure is required in the context of further investigations or subsequent judicial proceedings.

(3) The reporting of infringements by employees of UCIs, management companies, depositaries as well as any undertaking contributing towards the activities of the UCI which is subject to supervision by the CSSF, referred to in paragraph 1, does not constitute an infringement of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision, and does not subject the person reporting to liability of any kind relating to such reporting.

(4) UCIs, management companies, depositaries as well as any undertaking contributing towards the activities of the UCI which is subject to supervision by the CSSF shall have in place appropriate procedures for their employees to report infringements internally through a specific, independent and autonomous channel.

Chapter 21 – Obligations concerning information to be supplied to investors

A. – Publication of a prospectus and periodical reports

Art. 150

(1) The investment company and the management company, for each of the common funds it manages, must publish:

- a prospectus,
- an annual report for each financial year, and
- a half-yearly report covering the first six months of the financial year.

(2) The annual and half-yearly reports must be published within the following time limits, with effect from the end of the periods to which they relate:

- four months in the case of the annual report,
- two months in the case of the half-yearly report.

However, for undertakings for collective investment subject to Part II, the time limit of four months for the publication of the annual report referred to in the first indent is extended to six months, and the time limit for the publication of the half-yearly report referred to in the second indent is extended to three months.

(3) The obligation to publish a prospectus within the meaning of this Law shall not apply to undertakings for collective investment of the closed-ended type.

Art. 151

(1) The prospectus must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. The prospectus shall include, independent of the instruments invested in, a clear and easily understandable description of the fund's risk profile.

For UCITS falling within the scope of Part I, the prospectus shall also include either:

a) the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists; or

b) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how the remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

(2) The prospectus shall contain at least the information provided for in Schedule A of Annex I of this Law in so far as such information does not already appear in the management regulations or instruments of incorporation annexed to the prospectus in accordance with Article 152, paragraph 1.

(3) The annual report must include a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the past financial year and the other information provided for in Schedule B of Annex I of this Law, as well as any significant information which will enable investors to make an informed judgement on the development of the activities and the results of the UCI.

For UCITS falling within the scope of Part I, the annual report shall also include:

a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;

b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in article 111*bis*, paragraph 3;

c) a description of how the remuneration and the benefits have been calculated;

d) the outcome of the reviews referred to in article 111*ter*, paragraph 1, points c) and d), including any irregularities that have occurred;

e) material changes to the adopted remuneration policy.

(4) The half-yearly report must include at least the information provided for in Chapters I to IV of Schedule B of Annex I of this Law. Where a UCI has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

(5) The Schedules as provided for by paragraphs 2, 3 and 4 may be differentiated by the CSSF for UCIs subject to Articles 87 and 100, depending on whether or not these UCIs display certain characteristics or fulfil certain conditions.

Art. 152

(1) The management regulations or the instruments of incorporation of the investment company shall form an integral part of the prospectus and must be annexed thereto.

(2) The documents referred to in paragraph 1 need not, however, be annexed to the prospectus provided that the unitholder is informed that, on request, he will either be sent those documents or be apprised of the place where, in each Member State the units are marketed, he may consult them.

Art. 153

The essential elements of the prospectus must be kept up to date.

Art. 154

(1) Luxembourg UCIs must have the accounting information given in their annual report audited by an approved statutory auditor.

The approved statutory auditor's report and, as the case may be, its qualifications are set out in full in each annual report.

The approved statutory auditor must prove it has appropriate professional experience.

(2) The approved statutory auditor shall be appointed and remunerated by the UCI.

(3) The approved statutory auditor must report promptly to the CSSF any fact or decision of which it has become aware while carrying out the audit of the accounting information contained in the annual report of a UCI or any other legal task concerning a UCI, where such a fact or decision is likely to:

- constitute a substantial breach of this Law or the regulations adopted for its execution; or

- affect the continuous functioning of the UCI or of an undertaking contributing towards its business activity; or

- lead to a refusal to certify the accounts or to the expression of qualifications thereon.

The approved statutory auditor likewise has a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a UCI, any fact or decisions concerning the UCI and meeting the criteria referred to in the preceding sub-paragraph of which it has become aware while carrying out the audit of the accounting information contained in their annual report or of another legal task in relation to another undertaking having close links resulting from a control relationship with the UCI or having close links with an undertaking involved in its business activity.

If, in the discharge of his duties, the approved statutory auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the UCI does not truly describe the financial situation and the assets and liabilities of the UCI, he shall be obliged to inform the CSSF forthwith.

The approved statutory auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of his duties. The same applies if the approved statutory auditor ascertains that the assets of the UCI are not or have not been invested in accordance with the provisions of this Law or of the prospectus.

The disclosure in good faith to the CSSF by the approved statutory auditor of any fact or decision referred to in this paragraph shall not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed contractually and shall not result in liability of any kind of the approved statutory auditor.

Each Luxembourg UCI subject to the supervision of the CSSF whose accounts have to be audited by an approved statutory auditor, must communicate to the CSSF spontaneously the reports and written comments of the approved statutory auditor in the context of its audit of the annual accounting documents.

The CSSF may regulate the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the approved statutory auditor referred to in the preceding sub-paragraph, without prejudice to the legal provisions governing the content of the independent auditor's report.

The CSSF may request an approved statutory auditor to perform an audit on one or several particular aspects of the activities and operations of a UCI. This audit is performed at the expense of the UCI concerned.

(4) The CSSF shall refuse or withdraw the entry on the list of UCIs whose approved statutory auditor does not satisfy the conditions or does not discharge the obligations prescribed in this Article.

(5) The institution of the supervisory auditors provided for by Articles 61, 109, 114 and 200 of the Law of 10 August 1915 on commercial companies, as amended, is not applicable to Luxembourg investment companies. The directors or the management board, as the case may be, are solely competent in all cases where the Law of 10 August 1915 on commercial companies, as amended, provides for the joint action of the supervisory auditors and the directors or the management board, as the case may be, or managers together.

The institution of supervisory auditors provided for by Article 151 of the Law of 10 August 1915 on commercial companies, as amended, is not applicable to Luxembourg investment companies. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the approved statutory auditor. This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

The obligation to draw up a report on the liquidation as referred to in the preceding sub-paragraph is also applicable to UCIs having the legal form of a common fund. The decision to put the common fund into liquidation and the decision relating to the closure of the liquidation must be deposited with the register of commerce and companies and their publication in the *Recueil électronique des sociétés et associations* is made by way of a notice advising of the deposit of these decisions with the register of commerce and companies in accordance with the provisions of the amended Law of 10 August 1915 on commercial companies.

(6) The accounting information included in the annual reports of foreign UCIs as referred to in Article 100 must be audited by an independent expert providing all guarantees of good repute and professional skill.

Paragraphs 2, 3 and 4 are applicable to the case referred to in this paragraph.

Art. 155

(1) UCIs must send their prospectuses and any amendments thereto, as well as their annual and half-yearly reports, to the CSSF. UCIs must, on request, provide these documents to the competent authorities of the management company's home Member State.

(2) The CSSF may publish or cause the publication of the aforesaid documents by any such means as it shall consider adequate.

Art. 156

(1) The prospectus and the latest published annual and half-yearly reports shall be provided to investors on request and free of charge.

(2) The prospectus may be provided in a durable medium or by means of a website. A paper copy shall, in any case, be delivered to investors on request and free of charge.

(3) The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus as well as in the key investor information referred to in Article 159 in respect of UCITS. A paper copy of the annual and half-yearly reports shall, in any case, be delivered to investors on request and free of charge.

B. – Publication of other information

Art. 157

(1) The UCITS referred to in Article 2 must make public the issue, sale and repurchase price of their units each time they issue, sell and repurchase their units, and at least twice a month. The CSSF may, however, permit a UCITS to reduce this frequency to once a month, on condition that such derogation does not prejudice the interests of unitholders.

(2) The UCIs referred to in Article 87 must make public the issue, sale and repurchase price of their units each time they issue, sell and repurchase their units, and at least once a month. The CSSF may, however, grant derogations therefrom upon a duly justified application.

Art. 158

All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of UCIs that contains specific information about UCIs shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and, for UCITS, the key investor information referred to in Article 159. It shall indicate that a prospectus exists and, for UCITS, that the key investor information referred to in Article 159 is available. It shall specify where and in which language such information and documents may be obtained by investors or potential investors or how they may obtain access to them.

C. – Key investor information to be established by UCITS

Art. 159

(1) Investment companies and management companies, for each of the common funds they manage, must draw up a short document containing key information for investors. That document shall be referred to as "key investor information" in this Law.

Where the UCITS is established in Luxembourg or markets its units in Luxembourg pursuant to Chapter 7, the words "key investor information" shall be clearly stated in that document, in Luxembourgish, French, German or English.

(2) Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

(3) Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

a) identification of the UCITS and the reference that the CSSF is the competent authority for the supervision of the UCITS pursuant to this Law;

b) a short description of its investment objectives and investment policy;

c) past performance presentation or, where relevant, performance scenarios;

d) costs and associated charges; and

e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

Those essential elements shall be comprehensible to the investor without any reference to other documents.

(4) Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request and free of charge, at any time, and the language in which such information is available to investors.

Key investor information shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

(5) Key investor information shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

(6) Key investor information shall be used without alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units in accordance with Article 54.

Art. 160

(1) Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.

(2) No person shall incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning that no person shall incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus.

Art. 161

(1) Investment companies and management companies, for each of the common funds they manage, which sell UCITS directly or through another natural or legal person who acts on their behalf and under their full and unconditional responsibility shall provide investors with key investor information on those UCITS in good time before their proposed subscription of units in those UCITS.

Key investor information does not necessarily need to be provided to investors in a State other than a Member State, unless the competent authorities of this State require that this information is provided to investors.

A UCI, other than a UCITS, is authorised to draw up a document containing key investor information, within the meaning of this Law. In that case, the document in question must contain a clear statement that the UCI which draws up the key investor information is not a UCITS subject to Directive 2009/65/EC.

(2) Investment companies and management companies, for each of the common funds they manage, which do not sell UCITS directly or through another natural or legal person who acts on their behalf and under their full and unconditional responsibility shall provide key investor information to product manufacturers and intermediaries selling those UCITS to investors or advising investors on potential investments in those UCITS or in products offering exposure to those UCITS upon their request. The intermediaries selling UCITS or advising investors on potential investments in UCITS must provide key investor information to their clients or potential clients.

(3) Key investor information shall be provided to investors free of charge.

Art. 162

Key investor information may be provided in a durable medium or by means of a website. A paper copy shall, in any case, be delivered to investors on request and free of charge.

In addition an up to date version of the key investor information shall moreover be published on the Website of the investment company or the management company.

Art. 163

(1) UCITS must provide the CSSF with key investor information and any amendment thereto.

(2) The essential elements of the key investor information must be kept up to date.

D. – Protection of name

Art. 164

(1) No entity shall make use of designations or of a description giving the impression that its activities are subject to this Law if it has not obtained the authorisation provided for in Article 130. The UCIs referred to in Chapter 7 and in Article 100 may use the designation they bear according to their national law. However, should this be misleading, these undertakings shall accompany the designation they use with adequate particulars.

(2) The District Court dealing with commercial matters of the place where the UCI is situated or of the place where the designation has been used, may, at the request of the public prosecutor's office, issue an injunction prohibiting anyone from using the designation as defined in paragraph 1, if the conditions provided for by this Law are not or no longer met.

(3) The final judgement or court decision which delivers this injunction, is published by the public prosecutor's office and at the expense of the person convicted in two Luxembourg or foreign newspapers with adequate circulation.

Chapter 22 – Criminal law provisions

Art. 165

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed upon:

(1) any person who has issued or redeemed or caused to be issued or redeemed units of a common fund in the cases referred to in Articles 12, paragraph 3, 22, paragraph 3 and in Article 90 to the extent that this Article provides that Chapter 11 is subject to Articles 12, paragraph 3 and 22, paragraph 3;

(2) any person who has issued or redeemed units of a common fund at a price other than that obtained by application of the criteria provided for in Articles 9, paragraph 1, 9, paragraph 3, 11, paragraph 3 and in Article 90 to the extent that this Article provides that Chapter 11 is subject to Articles 9, paragraph 1 and 9, paragraph 3;

(3) any person who, as director or member of the management board, as the case may be, or as manager or supervisory auditor of the management company or the depositary has made loans or advances on units of the common fund using assets of the common fund, or who has by any means at the expense of the common fund, made payments in order to pay up units or acknowledged payments to have been made which have not actually been so made.

Art. 166

(1) A penalty of imprisonment of one to six months and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed upon:

(a) the directors or members of the management board, as the case may be, or managers of the management company who has failed to inform the CSSF without delay that the net assets of the common fund have fallen below two thirds and one fourth, respectively, of the legal minimum for the net assets of the common fund;

(b) the directors or members of the management board, as the case may be, or managers of the management company who has infringed Article 10 and Articles 41 to 52 or Article 90 to the extent that this Article provides that Chapter 11 is subject to Article 10 and the regulations made pursuant to Article 91.

(2) A fine of five hundred to twenty-five thousand euros shall be imposed upon any persons who, in violation of Article 164, use a designation or description giving the impression that they relate to the activities subject to this Law if they have not obtained the authorisation provided for in Article 130.

Art. 167

A fine of five hundred to ten thousand euros shall be imposed on the directors or members of the management board, as the case may be, or managers of the management company or the investment company who have not caused the issue and repurchase price of the units of the UCI to be determined at the specified intervals or who have not made such prices public according to Article 157.

Art. 168

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed upon the founders, directors or members of the management board, as the case may be, or managers of an investment company who have infringed the provisions of Articles 28, paragraph 2, 28, paragraph 4 and 28, paragraph 10 of this Law; of Article 39 to the extent that it provides that Chapter 4 is subject to Articles 28, paragraph 2, 28, paragraph 4 and 28, paragraph 10; of Articles 41 to 52; of Article 95 of this Law to the extent that it provides that Chapter 12 is subject to Articles 28, paragraph 2, point a), 28, paragraph 4 and 28, paragraph 10; of the regulations made pursuant to Article 96 and of the regulations made pursuant to Article 99.

Art. 169

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed upon the directors or members of the management board, as the case may be, or managers of an investment company who have not convened the extraordinary general meeting in accordance with Article 30; Article 39 to the extent that it provides that Chapter 4 is subject to Article 30; Article 95 to the extent that it provides that Chapter 12 is subject to Article 30 and Article 98 paragraphs 2 to 4.

Art. 170

A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euros or either of these penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of savings from the public with a view to investment if the UCI for which they acted was not entered on the list.

Art. 170-1

A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euros or either of these penalties shall be imposed on anyone who carries out, the activity of a

management company within the meaning of Chapters 15, 16 and 17 or the activity of an investment company within the meaning of article 27, without the prior approval of the CSSF.

Art. 171

(1) A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed on the directors of UCIs referred to in Articles 97 and 100 who have failed to observe the conditions imposed upon them by this Law.

(2) The same penalties, or either one of them only, shall be imposed upon the directors of UCIs referred to in Articles 2 and 87 who, notwithstanding the provisions of Article 142, paragraph 3, have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

Chapter 23 – Tax provisions

Art. 172

The tax provisions of this Law apply to UCIs which are subject to this Law as well as UCIs which are subject to the Law of 20 December 2002 on undertakings for collective investment, as amended.

Art. 173

(1) Without prejudice to the collection of registration fees and transcription and implementation of national legislation on value added tax, there is no other tax payable by UCIs located or established in Luxembourg within the meaning of this Law, apart from the subscription tax mentioned below in Articles 174 to 176.

(2) The amounts distributed by such undertakings shall not be subject to withholdings and are not taxable if received by non-residents.

Art. 174

(1) The rate of the annual subscription tax payable by the undertakings referred to in this Law shall be 0.05%.

(2) This rate is 0.01% for:

a) undertakings whose sole object is the collective investment in money market instruments and in deposits with credit institutions;

b) undertakings whose sole object is the collective investment in deposits with credit institutions;

c) individual compartments of UCIs with multiple compartments referred to in this Law as well as for individual classes of securities issued within a UCI or within a compartment of a UCI with multiple compartments, provided that the securities of such compartments or classes are reserved to one or more institutional investors.

Art. 175

Are exempt from the subscription tax:

a) the value of the assets represented by units held in other UCIs, provided such units have already been subject to the subscription tax provided for in Article 174 or in Article 68 of the Law of 13 February 2007 on specialised investment funds or by article 46 of the Law of 23 July 2016 on reserved alternative investment funds;

b) UCIs as well as individual compartments of UCIs with multiple compartments:

(i) whose securities are reserved for institutional investors, and

(ii) whose sole object is the collective investment in money market instruments and the placing of deposits with credit institutions, and

(iii) whose weighted residual portfolio maturity does not exceed 90 days, and

(iv) that have obtained the highest possible rating from a recognised rating agency.

Where several classes of securities exist within the UCI or the compartment, the exemption only applies to classes whose securities are reserved for institutional investors;

c) UCIs whose securities are reserved for (i) institutions for occupational retirement pension or similar investment vehicles, set up on one or more employers' initiative for the benefit of their employees and (ii) companies of one or more employers investing funds they hold, to provide retirement benefits to their employees.

d) UCIs as well as individual compartments of UCIs with multiple compartments whose main objective is the investment in microfinance institutions.

e) UCIs as well as individual compartments of UCIs with multiple compartments:

(i) whose securities are listed or traded on at least one stock exchange or another regulated market operating regularly, recognised and open to the public; and

(ii) whose exclusive object is to replicate the performance of one or more indices.

If several classes of securities exist within the UCI or the compartment, the exemption only applies to classes fulfilling the condition of sub-point (i).

Art. 176

(1) The taxable basis of the subscription tax shall be the aggregate net assets of the UCI as valued on the last day of each quarter.

(2) A Grand-Ducal Regulation shall determine the conditions necessary for the application of the rate of 0.01% and the exemption, and shall determine the criteria with which the money market instruments referred to in Articles 174 and 175 must comply.

(3) A Grand-Ducal Regulation shall determine the criteria which must be met by UCIs as well as by individual compartments of UCIs with multiple compartments referred to in Article 175 point (d).

(4) Without prejudice to additional or alternative criteria that may be determined by Grand-Ducal Regulation, the index referred to in Article 175, point (e), sub-point (ii) must represent an adequate benchmark for the market to which it refers and must be published in an appropriate manner.

(5) Any condition of pursuing a sole objective as laid down in Article 174 2 and Article 175 does not preclude the management of liquid assets, if any, on an ancillary basis by means of placement of securities issued by undertakings referred to in Article 174 2 a) and 2 b), or the use of techniques and instruments used for hedging or for purposes of efficient portfolio management.

(6) The provisions of Articles 174 to 176 apply *mutatis mutandis* to the individual compartments of a UCI with multiple compartments.

Art. 177

The duties of the registration administration include the fiscal control of UCIs.

If, at any date after the constitution of the UCIs referred to in this Law, the said administration ascertains that such UCIs are engaging in operations which exceed the framework of the activities authorised by this Law, the tax provisions provided for in Articles 172 to 175 shall cease to be applicable.

Moreover, the registration administration may levy a fiscal fine of a maximum of 0.2% on the aggregate amount of the assets of the UCIs.

Art. 178

Article 156, number 8), lit. c) of the amended Law of 4 December 1967 on income tax, is amended and supplemented as follows: "c), However, revenues from the sale of a holding in an undertaking for collective investment in corporate form, in an investment company in risk capital or in a family estate management company[29] are not concerned by number 8a and 8b."

Art. 179

UCIs which are established outside the territory of Luxembourg are exempt from corporate income tax, local business tax and wealth tax when they have their effective centre of management or head office within the territory of Luxembourg.

Chapter 24 – Special provisions in relation to the legal form

Art. 180

(1) Investment companies entered in the list provided for by Article 130, paragraph 1 may be converted into SICAVs and their articles of incorporation may be harmonised with the provisions of Chapter 3 or, as the case may be, Chapter 12 by resolution of a general meeting passed with a majority of two thirds of the votes of the unitholders present or represented regardless of the portion of the capital represented.

(2) The common funds referred to in Chapter 2 or, as the case may be, in Chapter 11 may, under the same conditions as those laid down in paragraph 1 above, convert themselves into a SICAV governed by Chapter 3 or, as the case may be, Chapter 12.

Art. 181

(1) UCIs may be comprised of multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the UCI.

(2) The management regulations or the instruments of incorporation of the UCI must expressly provide for that possibility and the applicable operational rules. The prospectus must describe the specific investment policy of each compartment.

(3) The units of UCIs with multiple compartments may be of different value with or without indication of a par value depending on the legal form which has been chosen.

(4) Common funds with multiple compartments may, by separate management regulations, determine the characteristics of and rules applicable to each compartment.

(5) The rights of unitholders and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the

[29] *société de gestion de patrimoine familiale*

assets of that compartment, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

For the purpose of the relations between unitholders, each compartment will be deemed to be a separate entity, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

(6) Each compartment of a UCI may be liquidated separately without that separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of the UCI will result in the liquidation of the UCI as referred to in Article 145, paragraph 1. In this case, where the UCI is in corporate form as from the event giving rise to the liquidation of the UCI, and under penalty of nullity, the issue of shares shall be prohibited except for the purposes of liquidation.

(7) The authorisation of a compartment of a UCI, as referred to in Articles 2 and 87, is subject to the condition that all provisions of the laws, regulations or agreements relating to its organisation and operation are complied with. The withdrawal of authorisation of the compartment does not give rise to the withdrawal of the UCI from the list provided for in Article 130, paragraph 1.

(8) A compartment of a UCI may, subject to the conditions provided for in the management regulations or the instruments of incorporation as well as in the prospectus, subscribe, acquire and/or hold securities to be issued or issued by one or more other compartments of the same UCI without that UCI being subject to the requirements of the Law of 10 August 1915 on commercial companies, as amended, when it is constituted in corporate form, with respect to the subscription, acquisition and/or the holding by a company of its own shares, under the condition, however, that:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment; and

- no more than 10% of the assets of the target compartments whose acquisition is contemplated may, pursuant to their management regulations or their instruments of incorporation, be invested in aggregate in units of other target compartments of the same UCI; and

- voting rights, if any, attaching to the relevant securities are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports; and

- in any event, for as long as these securities are held by the UCI, their value will not be taken into consideration for the calculation of the net assets of the UCI for the purposes of verifying the minimum threshold of the net assets imposed by this Law.

Art. 182

All the provisions of this Law referring to "public limited company" shall be understood as referring also to "European company (SE)".

Chapter 25 – Transitional provisions

Art. 183[30]

Art. 184[31]

Art. 185[32]

Art. 186[33]

Art. 186-1

(1) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, UCIs subject to Part II established before 22 July 2013, and whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, will have until 22 July 2014 to comply with the provisions of Chapter 10*bis*. For those UCIs, Articles 78, 79, 80, 81, 83, 86 and 87 of the Law of 12 July 2013 relating to alternative investment fund managers shall only be applicable from the date when they comply with the provisions of Chapter 10*bis*, or from 22 July 2014 at the latest.

(2) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, UCIs subject to Part II, established between 22 July 2013 and 22 July 2014, shall qualify as AIFs within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers, from the date they are established. These UCIs subject to Part II whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU must comply with the provisions of Chapter 10*bis* from the date they are established. By way of derogation from this principle, these UCIs of Part II, established between 22 July 2013 and 22 July 2014 with an external AIFM which exercises the activities of AIFM before 22 July 2013, will have until 22 July 2014 at the latest to comply with the provisions of Chapter 10*bis*. For those UCIs, Articles 78, 79, 80, 81, 83, 86 and 87 of the Law of 12 July 2013 relating to alternative investment fund managers shall only be applicable from the date when they comply with the provisions of Chapter 10*bis* or from 22 July 2014 at the latest.

(3) All UCIs subject to Part II, established after 22 July 2014, shall be ipso jure governed by Chapter 10*bis*. These UCIs of Part II or, where applicable, their AIFM, shall be ipso jure, subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers and the derogation provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, governed by the provisions of the Law of 12 July 2013 relating to alternative investment fund managers.

(4) UCIs subject to Part II established before 22 July 2013 which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers and which do not make any additional investments after such date, do not need to be managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers. These Part II UCIs must only comply with the Articles of this Law which are applicable to UCIs whose AIFM benefits from and makes

[30] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[31] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[32] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[33] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, except for Article 128.

(5) UCIs subject to Part II which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers and whose subscription period for investors has closed prior to 22 July 2011 and which are established for a period of time expiring at the latest three years after 22 July 2013, do not need to comply with the provisions of the Law of 12 July 2013 relating to alternative investment fund managers, except for Article 20 and, where applicable, Articles 24 to 28 of the Law of 12 July 2013 relating to alternative investment fund managers, nor do they need to submit an application for authorisation under the Law of 12 July 2013 relating to alternative investment fund managers.

(6) Subject to the application of Article 58(3) and (4) of the Law of 12 July 2013 relating to alternative investment fund managers, management companies authorised under Chapter 15 which manage, before 22 July 2013, as appointed management company, one or more AIFs within the meaning of Directive 2011/61/EU, will have until 22 July 2014 to comply with the provisions of Article 101-1.

(7) Subject to the application of Article 58(3) and (4) of the Law of 12 July 2013 relating to alternative investment fund managers, management companies authorised under Chapter 16 which manage, before 22 July 2013, as appointed management company, one or more AIFs within the meaning of Directive 2011/61/EU, in the case referred to in Article 125-2, will have until 22 July 2014 to comply with the provisions of this Article 125-2.

Art. 186-2

(1) Without prejudice to the provisions set forth in paragraphs 2, 3 and 4, UCITS subject to Part I as well as their depositaries will have until 18 March 2016 at the latest to comply with the new provisions of Articles 17 to 20, 33 to 35, 37 and 39 depending on the legal form adopted by the UCITS concerned.

This paragraph applies both to UCITS created before the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU and to UCITS created after the entry into force of that Law.

(2) For common funds subject to Chapter 2 as well as their depositaries, which have not yet complied with the new provisions set forth in paragraph 1, the following former provisions remain in force and continue to refer to the amended Law of 17 December 2010 relating to undertakings for collective investment before its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

"**Art. 17**. (1) The assets of the common fund must be entrusted to a depositary for safe-keeping.

(2) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State.

(3) The depositary must be a credit institution within the meaning of the Law of 5 April 1993 on the financial sector, as amended.

(4) The depositary's liability shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

(5) The directors of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the common fund concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(6) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the common fund with this Law.

Art. 18. (1) The depositary shall carry out all operations concerning the day-to-day administration of the assets of the common fund.

(2) The depositary must moreover:

a) ensure that the sale, issue, repurchase and cancellation of units effected on behalf of the common fund or by the management company are carried out in accordance with the law and the management regulations,

b) ensure that the value of units is calculated in accordance with the law and the management regulations,

c) carry out the instructions of the management company, unless they conflict with the law or the management regulations,

d) ensure that in transactions involving the common fund's assets, any consideration is remitted to it within the usual time limits,

e) ensure that the common fund's income is applied in accordance with the management regulations.

(3) Where the management company's home Member State is not the same as that of the common fund, the depositary must sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions described in Articles 17(1) and (4) and 18(2) and in other laws, regulations or administrative provisions which are relevant for the depositary.

Art. 19. (1) The depositary shall be liable, in accordance with Luxembourg law, to the management company and to the unitholders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

(2) Liability to unitholders shall be invoked through the management company. Should the management company fail to act despite a written notice to that effect from a unitholder within a period of three months following receipt of such a notice, that unitholder may directly invoke the liability of the depositary.

Art. 20. In the context of their respective roles, the management company and the depositary must act independently and solely in the interest of the "unitholders"."

(3) For SICAVs subject to Chapter 3 as well as for their depositaries, which have not yet complied with the new provisions set forth in paragraph 1, the following former provisions remain in force and continue to refer to the amended Law of 17 December 2010 relating to undertakings for collective investment before its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

"**Art. 33**. (1) The safe-keeping of the assets of a SICAV must be entrusted to a depositary.

(2) The depositary's liability shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

(3) The depositary must moreover:

a) ensure that the sale, issue, repurchase and cancellation of units effected by or on behalf of the SICAV are carried out in accordance with the law and the articles of incorporation of the SICAV;

b) ensure that in transactions involving the assets of the SICAV, any consideration is remitted to it within the usual time limits;

c) ensure that the income of the SICAV is applied in accordance with its articles of incorporation.

(4) In the case where a SICAV has designated a management company, if the management company's home Member State is not the same as that of the SICAV, the depositary must sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions set out in Article 33 (1), (2) and (3) and in other laws, regulations or administrative provisions which are relevant for the depositary

Art. 34. (1) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State.

(2) The depositary must be a credit institution within the meaning of the amended Law of 5 April 1993 on the financial sector.

(3) The directors of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of the SICAV concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(4) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the SICAV with this Law.

Art. 35. The depositary shall be liable, in accordance with Luxembourg law, to the investment company and to the unitholders for any loss suffered by them as a result of its unjustifiable failure of its obligations or improper performance of them.

Art. 37. In carrying out its role as depositary, the depositary must act solely in the interests of the unitholders."

(4) For the other investment companies in transferable securities subject to Chapter 4 as well as for their depositaries, which have not yet complied with the new provisions set forth in paragraph 1, the following former provisions remain in force and continue to refer to the amended Law of 17 December 2010 relating to undertakings for collective investment before its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

"**Art. 39**. Articles 26, 27, 28 with the exception of paragraphs (8) and (9), 30, 33, 34, 35, 36 and 37 of this Law are applicable to investment companies falling within the scope of this Chapter.".

Art. 186-3.

(1) Without prejudice to the provisions set forth in paragraphs 2 and 3, UCIs subject to Part II will have until **18 March 2016** at the latest to comply with the new provisions of Article 88-3.

This paragraph applies both to UCIs created before the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU and to UCIs created after the entry into force of that law.

(2) For UCIs managed by an AIFM authorised under Chapter 2 of the amended Law of 12 July 2013 relating to alternative investment fund managers, which have not yet complied with the new provisions set forth in paragraph 1, the provisions of Article 19 of the amended Law of 12 July 2013 mentioned above will remain applicable:

(3) For UCIs whose AIFM benefits from and uses the exemptions set forth in Article 3 of the amended Law of 12 July 2013 relating to alternative investment fund managers, which have not yet complied with the new provisions set forth in paragraph 1, the former provisions set forth in Article 186-2, paragraphs 2 to 4 will remain in force depending on the legal form adopted by the UCI concerned.

Art. 186-4.

Management companies subject to Chapter 15 as well SICAVs within the meaning of Article 27 will have until 18 March 2016 at the latest to comply with the new provisions of Articles 111*bis* and 111*ter*. This Article applies both to management companies and SICAVs created before the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU and to management companies and SICAVs created after the entry into force of that Law.

Chapter 26 –Final provisions

Art. 187[34]

Art. 188[35]

Art. 189[36]

Art. 190[37]

Art. 191[38]

Art. 192[39]

Art. 193

References to this Law may be made by using the following abridged title: "Law of 17 December 2010 on undertakings for collective investment".

Art. 194

This Law shall enter into force on the first day of the month following its publication in the *Mémorial*.

[34] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[35] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[36] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[37] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[38] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[39] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

ANNEX I

SCHEDULE A

1. Information concerning the common fund	**1. Information concerning the management company, including an indication whether the management company is established in a Member State other than the home Member State of the UCITS**	**1. Information concerning the investment company**
1.1 Name	1.1 Name, corporate name, legal form, registered office and head office if different from registered office	1.1 Name, corporate name, legal form, registered office and head office if different from registered office
1.2 Date of establishment of the common fund. Indication of duration, if limited	1.2 Date of incorporation of the company. Indication of duration, if limited	1.2 Date of incorporation of the company. Indication of duration, if limited
1.3 In the case of common funds having different investment compartments, indication of the compartments	1.3 If the company manages other common funds, indication of those other funds	1.3 In the case of investment companies having different investment compartments, indication of the compartments
1.4 Statement of the place where the management regulations, if they are not annexed, and periodical reports may be obtained		1.4 Statement of the place where the instruments of incorporation, if they are not annexed, and the periodical reports may be obtained
1.5 Brief indications relevant to unitholders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income and capital gains paid by the common fund to unitholders.		1.5 Brief indications relevant to unitholders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unitholders.
1.6 Accounting and distribution dates		1.6 Accounting and distribution dates
1.7 Names of the persons responsible for auditing the accounting information referred to in Article 148[40]		1.7 Names of the persons responsible for auditing the accounting information referred to in Article 148[41]

[40] The French version of this Law refers to Article 148 instead of Article 154.
[41] The French version of this Law refers to Article 148 instead of Article 154.

	1.8 Names and positions in the company of the members of the administrative body, management and supervisory boards. Details of their main activities outside the company where these are of significance with respect to that company	1.8 Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company
	1.9 Amount of the subscribed capital with an indication of the capital paid-up	1.9 Capital
1.10 Details of the types and main characteristics of the units and in particular: - the nature of the right (real, personal or other) represented by the unit, - original securities or certificates providing evidence of title; entry in a register or in an account, - characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, - indication of unitholders' voting rights if these exist, - circumstances in which liquidation of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unitholders		1.10 Details of the types and main characteristics of the units and in particular: - original securities or certificates providing evidence of title; entry in a register or in an account, - characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, - indication of unitholders' voting rights, - circumstances in which liquidation of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unitholders
1.11 Where applicable, indication of stock exchanges or markets where the units are listed or dealt in		1.11 Where applicable, indication of stock exchanges or markets where the units are listed or dealt in
1.12 Procedures and conditions of issue and/or sale of units		1.12 Procedures and conditions of issue and/or sale of units
1.13 Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of common funds having different investment compartments, information on how a unitholder may pass from one compartment into another and the charges applicable in		1.13 Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of investment companies having different investment compartments, information on how a unitholder may pass from one compartment into another and the charges applicable in

such cases		such cases
1.14 Description of rules for determining and applying income		1.14 Description of rules for determining and applying income
1.15 Description of the common fund's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the common fund.		1.15 Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.
1.16 Rules for the valuation of assets		1.16 Rules for the valuation of assets
1.17 Determination of the sale or issue price and the repurchase or redemption price of units, in particular: - the method and frequency of the calculation of those prices, - information concerning the charges relating to the sale or issue and the repurchase or redemption of units, - information concerning the means, places and frequency of the publication of those prices		1.17 Determination of the sale or issue price and the repurchase or redemption price of units, in particular: - the method and frequency of the calculation of those prices, - information concerning the charges relating to the sale or issue and the repurchase or redemption of units, - information concerning the means, places and frequency of the publication of those prices
1.18 Information concerning the manner, amount and calculation of remuneration payable by the common fund to the management company, the depositary or third parties, and reimbursement of costs by the common fund to the management company, to the depositary or to third parties		1.18 Information concerning the manner, amount and calculation of remuneration paid by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or third parties, and reimbursement of any costs by the company to its directors, the depositary or to third parties

2. Information concerning the depositary:

2.1. The identity of the depositary of the UCITS and a description of its duties and of the conflicts of interest that may arise

2.2. A description of any safekeeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interests that may arise from such a delegation

2.3. A statement to the effect that up-to-date information regarding points 2.1 and 2.2 will be made available to investors on request

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

3.1. Name or corporate name of the firm or name of the adviser

3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unitholders, excluding those relating to remuneration

3.3. Other significant activities

4. Information concerning the arrangements for making payments to unitholders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in Luxembourg. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published therein

5. Other investment information:

5.1. Historical performance of the UCITS (where applicable) – such information may be either included in or attached to the prospectus;

5.2. Profile of the typical investor for whom the UCITS is designed;

5.3. In case an investment company or a common fund has different investment compartments, the information referred to in items 5.1. and 5.2. must be given for each compartment.

6. Economic information:

6.1. Possible expenses or fees, other than the charges mentioned in item 1.17, distinguishing between those to be paid by the unitholder or those to be paid out of the assets of the UCITS.

SCHEDULE B

Information to be included in the periodical reports

I. Statement of assets and liabilities

- transferable securities,
- bank balances,
- other assets,
- total assets,
- liabilities,
- net asset value.

II. Number of units in circulation

III. Net asset value per unit

IV. Portfolio securities, distinguishing between:

(a) transferable securities admitted to official stock exchange listing;

(b) transferable securities dealt in on another regulated market;

(c) transferable securities referred to in Article 41, paragraph 1, point d);

(d) other transferable securities referred to in Article 41, paragraph 2, point a);

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic or geographical or currency criteria) as a percentage of net assets; for each of the aforementioned investments, the proportion it represents of the total assets of the UCITS.

Statement of changes in the composition of the portfolio during the reference period.

V. Statement of the developments concerning the assets of the UCITS during the reference period, including the following:

- income from investments,
- other income,
- management charges,
- depositary's charges,
- other charges and taxes,
- net income,
- distribution and income reinvested,
- increase or decrease of the capital account,
- appreciation or depreciation of investments,

- any other changes affecting the assets and liabilities of the UCITS,

- transaction costs, which are costs incurred by a UCITS in connection with transactions on its portfolio.

VI. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:

- the total net asset value,

- the net asset value per unit.

VII. Details, by category of transactions within the meaning of Article 42 carried out by the UCITS during the reference period, of the resulting amount of commitments

ANNEX II

Functions included in the activity of collective portfolio management

- Investment management
- Administration:
  - a) legal and fund management accounting services;
  - b) customer inquiries;
  - c) valuation of the portfolio and pricing of the units (including tax returns);
  - d) regulatory compliance monitoring;
  - e) maintenance of unitholder register;
  - f) distribution of income;
  - g) unit issue and repurchase;
  - h) contract settlements (including certificate dispatch);
  - i) record keeping.
- Marketing

2.

EXTRACT OF THE GRAND-DUCAL REGULATION OF 28 OCTOBER 2013

RELATING TO FEES TO BE LEVIED BY THE CSSF

Extract of the Grand-Ducal Regulation of 28 October 2013 relating to fees to be levied by the CSSF

Art. 1. Lump-sum fees

The fees to be levied by the CSSF to cover the operating costs for the supervision of the financial sector and for the public oversight of the audit profession in execution of Article 24 of the Law of 23 December 1998 creating a commission for the supervision of the financial sector are fixed as follows:

[…]

C. Undertakings for collective investment.

1) A single lump sum for the examination of each authorisation request of a Luxembourg undertaking for collective investment as referred to in Part I (hereafter "UCITS") of the Law of 17 December 2010 relating to undertakings for collective investment (hereafter "Law of 17 December 2010") in accordance with the rates shown in the table in paragraph 2) below.

For the purpose of application of this paragraph, a specific rate is provided for investment companies in transferable securities subject to Part I of the Law of 17 December 2010 which have not designated a management company subject to Chapter 15 of this law (hereafter "SIAG").

2) A single lump sum for the examination of each authorisation request of a Luxembourg undertaking for collective investment as referred to in Part II of the Law of 17 December 2010 (hereafter "UCI") and of a specialised investment fund as referred to in Part I and Part II, respectively (hereafter "SIF" and "SIF-AIF"), of the Law of 13 February 2007 relating to specialised investment funds (hereafter "Law of 13 February 2007") in accordance with the rates shown in the table below.

For the purpose of application of this paragraph, a specific rate is provided for investment companies in transferable securities under the scope of Part II of the Law of 17 December 2010 (hereafter "internally managed UCI") and for SIFs under the scope of Part II of the Law of 13 February 2007 (hereafter internally managed "SIF-AIF") in relation to which the governing body has not appointed an external AIFM within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers (hereafter "Law of 12 July 2013") and which request authorisation as AIFM under Chapter 2 of the Law of 12 July 2013:

	Examination charges
Stand-alone UCITS and UCI	3,500 euros
UCITS and UCI with multiple compartments	7,000 euros
Stand-alone SIAG or with multiple compartments	10,000 euros
Internally managed stand-alone UCI or internally managed UCI with multiple compartments	10,000 euros
Stand-alone SIF and SIF-AIF	3,500 euros
SIF and SIF-AIF with multiple compartments	7,000 euros
Internally managed stand-alone SIF-AIF or internally managed SIF-AIF with multiple compartments	10,000 euros

3) a single lump sum for each UCITS from an EU Member State marketing its units in Luxembourg when the CSSF receives from the competent authorities of the home Member State of the UCITS the documents referred to in Article 60 (1) of the Law of 17 December 2010, for the examination of each authorisation request of a foreign undertaking for collective investment as referred to in Article 100 (1) of the above law (hereafter "foreign UCI within the meaning of Article 100 (1)") as well as for the marketing in Luxembourg of each foreign alternative investment fund as referred to in Article 100 (2) of the same law (hereafter "foreign AIF within the meaning of Article 100 (2)") in accordance with the rates shown in the following table:

	Examination charges
Stand-alone UCITS from an EU Member State	2,650 euros
UCITS from an EU Member State with multiple compartments	5,000 euros
Stand-alone foreign UCI within the meaning of Article 100 (1)	2,650 euros
Foreign UCI with multiple compartments within the meaning of Article 100 (1)	5,000 euros
Stand-alone foreign AIF within the meaning of Article 100 (2)	2,650 euros
Foreign AIF with multiple compartments within the meaning of Article 100 (2)	5,000 euros

4) a single lump sum of 3,500 euros for each request for conversion of a stand-alone UCITS/UCI to a UCITS/UCI with multiple compartments;

5) a single lump sum of 3,500 euros for each request for conversion of a stand-alone SIF or SIF-AIF to a SIF or a SIF-AIF with multiple compartments;

6) a single lump sum for each request for conversion of a stand-alone UCI or SIF mentioned below under a) to e) and for which the CSSF has given its approval, in accordance with the following rates:

   a) 10,000 euros for each request for conversion of a UCI or SIF to a UCITS established in the form of a SIAG;

   b) 3,500 euros for each request for conversion of a UCI falling within the scope of Part II of the Law of 17 December 2010 (1) to a UCITS falling within the scope of Part I of the Law of 17 December 2010, other than a SIAG, or (2) to a SIF other than an internally managed SIF-AIF;

   c) 3,500 euros for each request for conversion of a SIF (1) to a UCITS falling within the scope of Part I of the Law of 17 December 2010, other than a SIAG, or (2) to a UCI falling within the scope of Part II of the Law of 17 December 2010 other than an internally managed UCI;

   d) 10,000 euros for each request for conversion of an existing UCI within the scope of Part II of the Law of 17 December 2010 (1) to an internally managed UCI or (2) to an internally managed SIF-AIF;

   e) 10,000 euros for each request for conversion of an existing SIF or a SIF-AIF within the scope of Part I or Part II of the Law of 13 February 2007 (1) to an internally managed SIF-AIF or (2) to an internally managed UCI;

7) a single lump sum for each request for conversion of a UCI with multiple compartments or a SIF with multiple compartments mentioned below in a) to e) and for which the CSSF has given its approval, in accordance with the following rates:

a) 10,000 euros for each request for conversion of a UCI or a SIF to a UCITS established in the form of a SIAG;

b) 7,000 euros for each request for conversion of a UCI falling within the scope of Part II of the Law of 17 December 2010 (1) to a UCITS falling within the scope of Part I of the Law of 17 December 2010, other than a SIAG, or (2) to a SIF other than an internally managed SIF-AIF;

c) 7,000 euros for each request for conversion of a SIF (1) to a UCITS falling within the scope of Part I of the Law of 17 December 2010, other than a SIAG, or (2) to a UCI falling within the scope of Part II of the Law of 17 December 2010 other than an internally managed UCI.

d) 10,000 euros for each request for conversion of an existing UCI within the scope of Part II of the Law of 17 December 2010 (1) to an internally managed UCI or (2) to an internally managed SIF-AIF;

e) 10,000 euros for each request for conversion of an existing SIF or a SIF-AIF within the scope of Part I or Part II of the Law of 13 February 2007 (1) to an internally managed SIF-AIF or (2) to an internally managed UCI.

8) an annual lump sum to be paid by each UCI and each SIF according to the rates shown in the following table:

	Annual lump sum
Stand-alone UCITS, UCI, SIF and SIF-AIF	3,000 euros
UCITS, UCI, SIF and SIF-AIF with multiple compartments	
1 to 5 compartments	6,000 euros
6 to 20 compartments	12,000 euros
21 to 50 compartments	20,000 euros
more than 50 compartments	30,000 euros

For UCITS, UCI, SIF and SIF-AIF with multiple compartments, the rates are fixed according to the number of compartments authorised by the CSSF listed in the prospectus as at 31 December prior to the billing year. For UCITS, UCI, SIF and SIF-AIF with multiple compartments which are authorised by the CSSF during the year, the rates are fixed according to the number of compartments at the time of inclusion on the official list;

9) an annual lump sum to be paid by each UCITS from an EU Member State, by each foreign UCI within the meaning of Article 100 (1) of the Law of 17 December 2010 and by each foreign AIF within the meaning of Article 100 (2) of the same law, in accordance with the rates shown in the following table:

	Annual lump sum
Stand-alone UCITS from an EU Member State	2,650 euros
UCITS from an EU Member State with multiple compartments	5,000 euros
Stand-alone foreign UCI within the meaning of Article 100 (1)	3,950 euros
Foreign UCI with multiple compartments within the meaning of Article 100 (1)	5,000 euros
Stand-alone foreign AIF within the meaning of Article 100 (2)	2,650 euros
Foreign AIF with multiple compartments within the meaning of Article 100 (2)	5,000 euros

10) the fee due under section M to be paid by foreign undertakings for collective investment of the closed-ended type for which the Grand Duchy of Luxembourg is the home Member State, for examination of each authorisation request and approval of their prospectus; not payable by Luxembourg closed-ended undertakings for collective investment or by Luxembourg SICARs;

11) an annual lump sum of 3,000 euros to be paid by each UCI in non-judicial liquidation and by each SIF in non-judicial liquidation. This lump sum is due for each financial year in which the non-judicial liquidation has not been closed, except the financial year during which the UCI and SIF were withdrawn from the official list.

D. Management companies and alternative investment fund managers.

I. Management companies

1) A single lump sum for the examination of each authorisation request of a new management company subject to the Law of 17 December 2010 depending on the chapter of the Law to which it is subject; a specific rate is provided for Chapter 15 management companies and for those subject to Chapter 16 of the Law of 17 December 2010 which, besides the authorisation required as a management company based on the chapter of the law to which they are subject, request authorisation as an AIFM based on Chapter 2 of the Law of 12 July 2013:

Chapter of the Law of 17 December 2010	Examination fee
Chapter 15 management company	10,000 euros
Chapter 15 management company and AIFM	10,000 euros
Chapter 16 management company (Article 125-1 of the Law of 17 December 2010)	5,000 euros
Chapter 16 management company (Article 125-2 of the Law of 17 December 2010)	10,000 euros
Chapter 17 management company	5,000 euros

2) a single lump sum of 7,500 euros for each request for conversion of a management company authorised pursuant to Article 125-1 of Chapter 16 of the Law of 17 December 2010 to a management company subject to Chapter 15 of the same law; the same single lump sum is due for each request for conversion of a management company authorised pursuant to Article 125-1 of Chapter 16 of the same law to a management company subject to Chapter 15 of the same law which is authorised as an AIFM pursuant to Chapter 2 of the Law of 12 July 2013;

3) a single lump sum of 2,500 euros for each request for conversion of a management company authorised pursuant to Article 125-2 of Chapter 16 of the Law of 17 December 2010 to a management company subject to Chapter 15 of the same law and authorised as AIFM pursuant to Chapter 2 of the Law of 12 July 2013;

4) a single lump sum of 2,500 euros for each request to extend the authorisation of an existing management company authorised pursuant to Chapter 15 of the Law of 17 December 2010 to the authorisation as an AIFM pursuant to Chapter 2 of the Law of 12 July 2013;

5) a single lump sum of 7,500 euros for each request to extend the authorisation of an existing management company authorised pursuant to Article 125-1 of Chapter 16 of the Law of 17 December 2010 to the authorisation as an AIFM pursuant to Chapter 2 of the Law of 12 July 2013 (management company referred to in Article 125-2 of the Law of 17 December 2010);

6) an annual lump sum to be paid by each management company subject to the Law of 17 December 2010 depending on the chapter of the Law to which it is subject; a specific rate is provided for management companies subject to Chapter 15 and for those subject to Chapter 16 of the Law of 17 December 2010 which, in addition, have been authorised as an AIFM based on the Chapter 2 of the Law of 12 July 2013:

Chapter of the Law of 17 December 2010	Annual lump sum
Chapter 15 management company	20,000 euros
Chapter 15 management company and AIFM	25,000 euros
Chapter 16 management company (Article 125-1 of the Law of 17 December 2010)	15,000 euros
Chapter 16 management company (Article 125-2 of the Law of 17 December 2010)	25,000 euros
Chapter 17 management company	15,000 euros

7) an additional annual lump sum of 2,000 euros to be paid by each management company subject to Chapter 15 of the Law of 17 December 2010 for each branch established abroad by any such company;

8) an additional annual lump sum of 2,000 euros to be paid by each management company subject to Chapter 16 of the Law of 17 December 2010 and authorised as an AIFM based on Chapter 2 of the Law of 12 July 2013 (management company referred to in Article 125-2 of the Law of 17 December 2010) for each branch established abroad under the said Law of 12 July 2013;

9) an annual lump sum of 5,000 euros to be paid by each foreign management company subject to Article 6 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 having opened a branch in Luxembourg.

II. Alternative investment fund managers

1) A single lump sum of 10,000 euros for the examination of each authorisation request of an AIFM under the Law of 12 July 2013;

2) a single lump sum of 5,000 euros for each application for registration of an AIFM under the Law of 12 July 2013, where it manages exclusively AIF that are not subject to authorisation and prudential supervision by an official supervisory authority in Luxembourg;

3) an annual lump sum of 25,000 euros to be paid by each AIFM authorised under the Law of 12 July 2013;

4) an additional annual lump sum of 5,000 euros to be paid by each AIFM under the Law of 12 July 2013 for each branch established abroad.

E. Investment companies in risk capital (SICAR).

1) A single lump sum of 3,500 euros for the examination of each authorisation request of a Luxembourg SICAR; this fee amounts to 7,000 euros in the case of an investment company in risk capital with multiple compartments; this fee amounts to 10,000 euros for SICAR-AIF within the scope of Part II of the Law of 15 June 2004 relating to the investment company in risk capital (SICAR) which have not appointed an external AIFM within the meaning of the Law of 12 July 2013 and which request authorisation as AIFM under Chapter 2 of the Law of 12 July 2013.

2) an annual lump sum of 3,000 euros to be paid by each Luxembourg SICAR; this fee amounts to 6,000 euros in the case of a SICAR with multiple compartments;

3) a single lump sum of 3,500 euros for each request for conversion of a SICAR to a SICAR with multiple compartments;

4) an annual lump sum of 3,000 euros to be paid by each SICAR in non-judicial liquidation. This lump sum is due for each financial year in which the non-judicial liquidation has not been closed, except the financial year during which the SICAR was withdrawn from the official list.

[…]

Art. 3. Collectability

(1) The fees referred to in Article 1 are fully payable upon first request. Non-payment may result in the imposition of administrative sanctions.

(2) The annual lump-sum fees referred to in Article 1 are due in full for a whole calendar year, even if the entity liable for payment was subject to the supervision of the CSSF for only part of the calendar year. […]

(3) The single lump-sum fees for examination of an application referred to in Article 1 are payable at the time the application is submitted. Without prejudice to the statutory deadlines prescribed for the examination of an application, the request will be dealt with only after the fee has been paid.

[…]

Art. 4. Entry into force and repealing provision

This regulation is applicable from the 1 November 2013. It repeals the Grand-Ducal Regulation of 29 September 2012 relating to fees to be levied by the Commission for the Supervision of the Financial Sector.

[…]

3.

GRAND-DUCAL REGULATION OF 8 FEBRUARY 2008

RELATING TO CERTAIN DEFINITIONS OF THE LAW OF 20 DECEMBER 2002 AS AMENDED CONCERNING UNDERTAKINGS FOR COLLECTIVE INVESTMENT AND IMPLEMENTING COMMISSION DIRECTIVE 2007/16/EC OF 19 MARCH 2007 IMPLEMENTING COUNCIL DIRECTIVE 85/611/EEC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) AS REGARDS THE CLARIFICATION OF CERTAIN DEFINITIONS

Grand-Ducal Regulation of 8 February 2008 relating to certain definitions of the amended Law of 20 December 2002 concerning undertakings for collective investment and implementing Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions

Article 1. Subject matter

This Regulation lays down rules clarifying the following terms of the amended Law of 20 December 2002 concerning undertakings for collective investments (the "amended Law of 20 December 2002")

(1) transferable securities, as defined in Article 1, item 26 of the amended Law of 20 December 2002;

(2) money market instruments, as defined in Article 1, item 18 of the amended Law of 20 December 2002;

(3) liquid financial assets, as referred to in the definition of undertakings for collective investment (UCITS) laid down in Article 2 paragraph (2) of the amended Law of 20 December 2002 with respect to financial derivative instruments;

(4) transferable securities and money market instruments embedding derivatives, as referred to in the fourth subparagraph of Article 42 paragraph (3) of the amended Law of 20 December 2002;

(5) techniques and instruments for the purpose of efficient portfolio management, as referred to in Article 42 paragraph (2) of the amended Law of 20 December 2002;

(6) index-replicating UCITS, as referred to in Article 44 paragraph (1) of the amended Law of 20 December 2002.

Article 2. Transferable securities

(1) The reference in Article 1, item 26 of the amended Law of 20 December 2002 to transferable securities shall be understood as a reference to financial instruments which fulfil the following criteria:

a) the potential loss which the UCITS may incur with respect to holding those instruments is limited to the amount paid for them;

b) their liquidity does not compromise the ability of the UCITS to comply with Articles 11 (2), 28 (1) b) and 40 respectively of the amended Law of 20 December 2002;

c) reliable valuation is available for them as follows:

i) in the case of securities admitted to or dealt in on a regulated market as referred to in points (a) to (d) of Article 41(1) of the amended Law of 20 December 2002, in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;

ii) in the case of other securities as referred to in point (a) of Article 41 (2) of the amended Law of 20 December 2002 in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research;

d) appropriate information is available for them as follows:

i) in the case of securities admitted to or dealt in on a regulated market as referred to in points (a) to (d) of Article 41(1) of the amended Law of 20 December 2002 in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security;

ii) in the case of other securities as referred to in point (a) of Article 41(2) of the amended Law of 20 December 2002 in the form of regular and accurate information to the UCITS on the security or, where relevant, on the portfolio of the security;

e) they are negotiable;

f) their acquisition is consistent with the investment objectives or the investment policy, or both, of the UCITS pursuant of the amended Law of 20 December 2002;

g) their risks are adequately captured by the risk management process of the UCITS.

For the purposes of points (b) and (e) and unless there is information available to the UCITS that would lead to a different determination, financial instruments which are admitted or dealt in on a regulated market in accordance with points (a), (b) or (c) of Article 41(1) of the amended Law of 20 December 2002 shall be presumed not to compromise the ability of the UCITS to comply with Articles 11 (2), 28(1) b) and 40 respectively of the amended Law of 20 December 2002 and shall also be presumed to be negotiable.

(2) Transferable securities as referred to in Article 1, item 26 of the amended Law of 20 December 2002 shall be taken to include the following:

a) units in closed end undertakings for collective investment constituted as investment companies or as unit trusts which fulfil the following criteria:

i) they fulfil the criteria set out in paragraph 1 of this Article;

ii) they are subject to corporate governance mechanisms applied to companies;

iii) where asset management activity is carried out by another entity on behalf of the closed end undertaking of collective investment, that entity is subject to national regulation for the purpose of investor protection;

b) units in closed end undertakings for collective investment constituted under the law of contract which fulfil the following criteria:

i) they fulfil the criteria set out in paragraph 1 of this Article;

ii) they are subject to corporate governance mechanisms equivalent to those applied to companies as referred to in point (a)(ii);

iii) they are managed by an entity which is subject to national regulation for the purpose of investor protection;

c) financial instruments which fulfil the following criteria:

i) they fulfil the criteria set out in paragraph 1of this Article;

ii) they are backed by, or linked to the performance of, other assets, which may differ from those referred to in Article 41 (1) of the amended Law of 20 December 2002.

(3) Where a financial instrument covered by point (c) of paragraph 2 contains an embedded derivative component as referred to in Article 10 of this Regulation, the requirements of Article 42 of the amended Law of 20 December 2002 shall apply to that component.

Article 3. Instruments normally dealt in on the money market

(1) The reference in Article 1, item 18 of the amended Law of 20 December 2002 to money market instruments as instruments shall be understood as a reference to the following:

a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with points (a), (b) and (c) of Article 41(1) of the amended Law of 20 December 2002;

b) financial instruments which are not admitted to trading.

(2) The reference in Article 1, item 18 of the amended Law of 20 December 2002 to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to financial instruments which fulfil one of the following criteria:

a) they have a maturity at issuance of up to and including 397 days;

b) they have a residual maturity of up to and including 397 days;

c) they undergo regular yield adjustments in line with money market conditions at least every 397 days;

d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in points (a) or (b), or are subject to a yield adjustment as referred to in point (c).

Article 4. Liquid instruments with a value which can be accurately determined at any time

(1) The reference in Article 1, item 18 of the amended Law of 20 December 2002 to money market instruments as instruments which are liquid shall be understood as a reference to financial instruments which can be sold at limited cost in an adequately short time frame, taking into account the obligation of the UCITS to repurchase or redeem its units at the request of any unit holder.

(2) The reference in Article 1, item 18 of the amended Law of 20 December 2002 to money market instruments as instruments which have a value which can be accurately determined at any time shall be understood as a reference to financial instruments for which accurate and reliable valuations systems, which fulfil the following criteria, are available:

a) they enable the UCITS to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction;

b) they are based either on market data or on valuation models including systems based on amortised costs.

(3) The criteria referred to in paragraphs 1 and 2 of this Article shall be presumed to be fulfilled in the case of financial instruments which are normally dealt in on the money market for the purposes of Article 1, item 18 of the amended Law of 20 December 2002 and which are admitted to, or dealt in on, a regulated market in accordance with points (a), (b) or (c) of Article 41(1) thereof, unless there is information available to the UCITS that would lead to a different determination.

Article 5. Instruments of which the issue or issuer is regulated for the purpose of protecting investors and savings

(1) The reference in Article 41(1)(h) of the amended Law of 20 December 2002 to money market instruments, other than those dealt in on a regulated market, of which the issue or the issuer is itself regulated for the purpose of protecting investors and savings, shall be under- stood as a reference to financial instruments which fulfil the following criteria:

a) they fulfil one of the criteria set out in Article 3(2) and all the criteria set out in Article 4(1) and (2) of this Regulation;

b) appropriate information is available for them, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account paragraphs 2, 3 and 4 of this Article;

c) they are freely transferable.

(2) For money market instruments covered by the second and the fourth indents of Article 41(1)(h) of the amended Law of 20 December 2002, or for those which are issued by a local or regional authority of a Member State or by a public international body but are not guaranteed by a Member State or, in the case of a federal State which is a Member State, by one of the members making up the federation, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in the following:

a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;

b) updates of the information referred to in point (a) on a regular basis and whenever a significant event occurs;

c) the information referred to in point (a), verified by appropriately qualified third parties not subject to instructions from the issuer;

d) available and reliable statistics on the issue or the issuance programme.

(3) For money market instruments covered by the third indent of Article 41(1)(h) of the amended Law of 20 December 2002, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in the following information:

a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;

b) updates of the information referred to in point (a) on a regular basis and whenever a significant event occurs;

c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.

(4) For all money market instruments covered by the first indent of Article 41(1)(h) of the amended Law of 20 December 2002 except those referred to in paragraph 2 of this Article and those issued by the European Central Bank or by a central bank from a Member State, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.

Article 6. Establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those laid down by Community law

The reference in the third indent of Article 41(1)(h) of the amended Law of 20 December 2002 to an establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those laid down by Community law shall be understood as a reference to an issuer which is subject to and complies with prudential rules and fulfils one of the following criteria:

1) it is located in the European Economic Area;

2) it is located in the OECD countries belonging to the Group of Ten;

3) it has at least "investment grade" rating;

4) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by Community law.

Article 7. Securitisation vehicles which benefit from a banking liquidity line

(1) The reference in the fourth indent of Article 41(1)(h) of the amended Law of 20 December 2002 to securitisation vehicles shall be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.

(2) The reference in the fourth indent of Article 41(1)(h) of the amended Law of 20 December 2002 to banking liquidity lines shall be understood as a reference to banking facilities secured by a financial institution which itself complies with the third indent of Article 41(1)(h) of the amended Law of 20 December 2002.

Article 8. Liquid financial assets with respect to financial derivative instruments

(1) The reference in Article 2(2) of the amended Law of 20 December 2002 to liquid financial assets shall be understood, with respect to financial derivative instruments, as a reference to financial derivative instruments which fulfil the following criteria:

a) their underlyings consist in one or more of the following:

i) assets as listed in the first indent of Article 41(1)(g) of the amended Law of 20 December 2002 including financial instruments having one or several characteristics of those assets;

ii) interest rates;

iii) foreign exchange rates or currencies;

iv) financial indices;

b) in the case of OTC derivatives, they comply with the conditions set out in the second and third indents of Article 41(1)(g) of the amended Law of 20 December 2002.

(2) Financial derivative instruments as referred to in Article 41(1)(g) of the amended Law of 20 December 2002 shall be taken to include instruments which fulfil the following criteria:

a) they allow the transfer of the credit risk of an asset as referred to in point (a) of paragraph 1 of this Article independently from the other risks associated with that asset;

b) they do not result in the delivery or in the transfer, including in the form of cash, of assets other than those referred to in Article 41(1) and (2) of the amended Law of 20 December 2002;

c) they comply with the criteria for OTC-derivatives laid down in the second and third indents of Article 41(1)(g) of the amended Law of 20 December 2002 and in paragraphs 3 and 4 of this Article;

d) their risks are adequately captured by the risk management process of the UCITS, and by its internal control mechanisms in the case of risks of asymmetry of information between the UCITS and the counterparty to the credit derivative resulting from potential access of the counterparty to non-public information on firms the assets of which are used as underlyings by credit derivatives.

(3) For the purposes of the third indent of Article 41(1)(g) of the amended Law of 20 December 2002, the reference to fair value shall be understood as a reference to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

(4) For the purposes of the third indent of Article 41(1)(g) of the amended Law of 20 December 2002, the reference to reliable and verifiable valuation shall be understood as a reference to a valuation, by the UCITS, corresponding to the fair value as referred to in paragraph 3 of this Article, which does not rely only on market quotations by the counterparty and which fulfils the following criteria:

a) the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised method- ology;

b) verification of the valuation is carried out by one of the following:

i) an appropriate third party which is independent from the counterparty of the OTC-derivative, at an adequate frequency and in such a way that the UCITS is able to check it;

ii) a unit within the UCITS which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose.

(5) The reference in Articles 2(2) and 41(1)(g) of the amended Law of 20 December 2002 to liquid financial assets shall be understood as excluding derivatives on commodities.

Article 9. Financial indices

(1) The reference in point (g) of Article 41(1) of the amended Law of 20 December 2002 to financial indices shall be understood as a reference to indices which fulfil the following criteria:

a) they are sufficiently diversified, in that the following criteria are fulfilled:

i) the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;

ii) where the index is composed of assets referred to in Article 41(1) of the amended Law of 20 December 2002, its composition is at least diversified in accordance with Article 44 of that law;

iii) (iii) where the index is composed of assets other than those referred to in Article 41(1) of the amended Law of 20 December 2002, it is diversified in a way which is equivalent to that provided for in Article 44 of that law;

b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled:

i) the index measures the performance of a representative group of underlyings in a relevant and appropriate way;

ii) the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;

iii) the underlyings are sufficiently liquid, which allows users to replicate the index, if necessary;

c) they are published in an appropriate manner, in that the following criteria are fulfilled:

i) their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;

ii) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

(2) Where the composition of assets which are used as underlyings by financial derivatives in accordance with Article 41(1) of the amended Law of 20 December 2002 does not fulfil the criteria set out in paragraph 1 of this Article, those financial derivatives shall, where they comply with the criteria set out in Article 8(1) of this Regulation, be regarded as financial derivatives on a combination of the assets referred to in points (i), (ii) and (iii) of Article 8(1) (a).

Article 10. Transferable securities and money market instruments embedding a derivative

(1) The reference in the fourth subparagraph of Article 42(3) of the amended Law of 20 December 2002 to transferable securities embedding a derivative shall be understood as a reference to financial instruments which fulfil the criteria set out in Article 2(1) of this Regulation and which contain a component which fulfils the following criteria:

a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, a financial instrument price, a foreign exchange rate, an index of prices or rates, a credit rating or credit index, or another variable, and therefore vary in a way similar to a stand-alone derivative;

b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;

c) it has a significant impact on the risk profile and pricing of the transferable security.

(2) Money market instruments which fulfil one of the criteria set out in Article 3(2) and all the criteria set out in Article 4(1) and (2) of this Regulation and which contain a component which fulfils the criteria set out in paragraph 1 of this Article shall be regarded as money market instruments embedding a derivative.

(3) A transferable security or a money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.

Article 11. Techniques and instruments for the purpose of efficient portfolio management

(1) The reference in Article 42(2) of the amended Law of 20 December 2002 to techniques and instruments which relate to transferable securities and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria:

(a) they are economically appropriate in that they are realised in a cost-effective way;

(b) they are entered into for one or more of the following specific aims:

(i) reduction of risk; (ii) reduction of cost;

(ii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules laid down in Article 43 of the amended Law de 20 December 2002.

(c) their risks are adequately captured by the risk management process of the UCITS.

(2) Techniques and instruments which comply with the criteria set out in paragraph 1 and which relate to money market instruments shall be regarded as techniques and instruments relating to money market instruments for the purpose of efficient portfolio management as referred to in Article 42(2) of the amended Law of 20 December 2002.

Article 12. Index replicating UCITS

(1) The reference in Article 44(1) of the amended Law of 20 December 2002 to replicating the composition of a stock or debt securities index shall be understood as a reference to replication of the composition of the underlying assets of the index, including the use of derivatives or other techniques and instruments as referred to in Article 42(2) of the amended Law of 20 December 2002 and Article 11 of this Regulation.

(2) The reference in the first indent of Article 44(1) of the amended Law of 20 December 2002 to an index whose composition is sufficiently diversified shall be understood as a reference to an index which complies with the risk diversification rules of said Article 44.

(3) The reference in the second indent of Article 44(1) of the amended Law of 20 December 2002 to an index which represents an adequate benchmark shall be understood as a reference to an index whose provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.

(4) The reference in the third indent of Article 44(1) of the amended Law of 20 December 2002 to an index which is published in an appropriate manner shall be understood as a reference to an index which fulfils the following criteria:

a) it is accessible to the public;

b) the index provider is independent from the index-replicating UCITS.

Point (b) shall not preclude index providers and the UCITS forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.

Article 13. Final Provisions

(1) This present Regulation will enter into force four days following its publication in the *Mémorial*.

(2) UCITS already in existence benefit from a time period until 23 July 2008 at the latest to comply with the provisions of this Regulation.

(3) Any reference to this Regulation may be made under the abbreviated title "Grand-Ducal Regulation relating to certain definitions of the amended Law of 20 December 2002 concerning undertakings for collective investments".

Article 14. Execution

Our Ministry of the Treasury and Budget is responsible for the execution of the present regulation which will be published in the *Mémorial*.

4.

GRAND-DUCAL REGULATION OF 14 APRIL 2003

DETERMINING THE CONDITIONS AND CRITERIA FOR THE APPLICATION OF THE SUBSCRIPTION TAX REFERRED TO IN ARTICLE 129 OF THE LAW OF 20 DECEMBER 2002 RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT

Grand-Ducal Regulation of 14 April 2003 determining the conditions and criteria for the application of the subscription tax referred to in Article 129 of the Law of 20 December 2002 relating to undertakings for collective investment

Art. 1.

"Money market instruments" as referred to in the provisions of Article 129, paragraph (2), of the Law of 20 December 2002 relating to undertakings for collective investment, means any debt securities and instruments, irrespective of whether they are transferable securities or not, including bonds, certificates of deposits, deposit receipts and all other similar instruments, provided that, at the time of their acquisition by the relevant undertaking, their initial or residual maturity does not exceed twelve months, taking into account the financial instruments connected therewith, or the terms and conditions governing those securities provide that the interest rate applicable thereto is adjusted at least annually on the basis of market conditions.

Art. 2.

The *Commission de Surveillance du Secteur Financier* establishes a list of undertakings for collective investment governed by the Law of 20 December 2002, which fulfill the conditions required to benefit from the reduced rate, for the purpose of calculating the annual subscription tax. The inscription on the appropriate list is carried out at the request of the undertakings concerned which are undertakings the exclusive object of which either is the collective investment in money market instruments and the placing of deposits with credit establishments or is the collective placing of deposits with credit establishments. This inscription is subject to the condition that the prospectus of the applying undertaking specifically indicates its investment policy.

The provisions of the preceding paragraph apply *mutatis mutandis* to the individual compartments of an undertaking for collective investment with multiple compartments.

Art. 3.

In order to obtain application of the exemption from the subscription tax in respect of the value of the assets represented by units of other undertakings for collective investment which are already submitted to the subscription tax provided for by Article 129 of the Law of 20 December 2002, the undertakings which hold such units must declare their value separately in the periodical declarations they file with the *Administration de l'Enregistrement et des Domaines.*

Art. 4.

The amended Grand-Ducal Regulation of 14 April 1995 adopted pursuant to the amended Law of 30 March 1988 relating to undertakings for collective investment is repealed effective 13 February 2007.

Art. 5.

Our Ministry of the Treasury and Budget is responsible for the execution of the present regulation which will be published in the *Mémorial*.

5.

CSSF REGULATION NO. 16-07

RELATING TO THE OUT-OF-COURT RESOLUTION OF COMPLAINTS

CSSF Regulation No. 16-07 relating to the out-of-court resolution of complaints

The Executive Board of the *Commission de Surveillance du Secteur Financier*;

Having regard to Article 108*bis* of the Constitution;

Having regard to Articles 2(5) and 9(2) of the Law of 23 December 1998 creating a commission for the supervision of the financial sector;

Having regard to Article 58 of the Law of 5 April 1993 on the financial sector;

Having regard to Article L.224-26(1) of the Consumer Code;

Having regard to Article 106 of the Law of 10 November 2009 on payment services;

Having regard to Article 133(3) of the Law of 17 December 2010 relating to undertakings for collective investment;

Having regard to Article 58(3) of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs);

Having regard to Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR);

Having regard to Article 36 (4) of the Law of 23 July 2016 concerning the audit profession;

Having regard to Book 4 of the Consumer Code;

Having regard to the opinion of the Consultative Committee for prudential regulation;

Adopts:

Article 1
Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) "consumer": pursuant to Article L. 010-1 of the Consumer Code, any natural person who acts for purposes which are outside his/her commercial, industrial, artisanal or professional activity:

(2) "CSSF": the Commission de Surveillance du Secteur Financier;

(3) "request": request for the out-of-court resolution of a complaint submitted to the CSSF in accordance with this Regulation;

(4) "applicant": any natural or legal person having submitted a request to the CSSF;

(5) "procedure": out-of-court complaint resolution procedure before the CSSF;

(6) "professional": any natural or legal person falling under the prudential supervision of the CSSF;

(7) "complainant": any natural or legal person having filed a complaint with a professional;

(8) "complaint": complaint filed with a professional to recognise a right or to redress a harm.

(9) "Regulation on consumer ODR": Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR);

(10) "durable medium": any instrument which enables a person or an entity to store information addressed to him/her/it personally in a way easily accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

Section 1
Provisions relating to the procedure before the CSSF

Article 2
Object and scope

(1) This section aims at defining the rules applicable to the requests for the out-of-court resolution of complaints filed with the CSSF. It shall apply to requests filed in accordance with the following legal provisions:

1. any request filed in accordance with Article 58 of the Law of 5 April 1993 on the financial sector;

2. any request filed in accordance with the first sub-paragraph of Article L.224-26(1) of the Consumer Code;

3. any request filed in accordance with the second sub-paragraph of Article L.224-26(1) of the Consumer Code;

4. any request filed in accordance with Article 106(1) of the Law of 10 November 2009 on payment services;

5. any request filed in accordance with Article 106(2) of the Law of 10 November 2009 on payment services;

6. any request filed in accordance with Article 133(3) of the Law of 17 December 2010 relating to undertakings for collective investment;

7. any request filed in accordance with Article 58(3) of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs);

8. any request filed in accordance with Article 36(4) of the Law of 23 July 2016 concerning the audit profession.

(2) Without prejudice to the provisions of the Regulation on consumer ODR, this Regulation shall also apply to requests referred to in paragraph (1) and filed through the European ODR platform, as defined in the Regulation on consumer ODR.

Article 3
Purpose and principles of the procedure

The procedure for handling the requests referred to in Article 2 aims at facilitating the resolution of complaints against professionals without judicial proceedings. The CSSF may end the procedure at any time if it finds that any of the parties uses the procedure for purposes other than the search for an amicable settlement of the complaint.

The procedure is not a mediation procedure within the meaning of the Law of 24 February 2012 introducing mediation in civil and commercial matters.

The CSSF's intervention shall be subject to the principles of impartiality, independence, transparency, expertise, effectiveness and fairness, referred to in Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

The reasoned conclusions of the CSSF referred to in Article 5(5) are not binding on the parties.

The conclusions of the CSSF may notably be based on legal provisions or on equity considerations.

Article 4
Admissibility of the requests

A request shall be filed with the CSSF under the conditions of Article 5.

A request shall not be admissible in the following cases:

- the complaint has previously been or is currently being examined by another alternative dispute resolution body, arbitrator, arbitration tribunal or a court, in Luxembourg or abroad;
- the complaint concerns the business policy of the professional;
- the complaint concerns a non-financial product or service;
- the request is unreasonable, frivolous or vexatious;
- the complaint has not previously been submitted to the relevant professional in accordance with Article 5(1) of this Regulation;
- the complainant has not filed a request with the CSSF within one year after he/she filed a request with the professional;
- the handling of the request would seriously impair the efficient functioning of the CSSF.

Article 5
Procedure

(1) Prior complaint to the professional

The opening of the procedure is subject to the condition that the complaint has previously been dealt with by the relevant professional in accordance with Section 2.

In this respect, the complaint must have previously been sent in writing to the person responsible for complaint handling at the level of the management of the professional concerned by the complaint and the complainant must not have received an answer or a satisfactory answer from that person within one month of sending the complaint.

(2) Referral to the CSSF

Where the complainant has not received an answer or a satisfactory answer within the period referred to in the preceding paragraph, he/she may file his/her request with the CSSF within one year after he/she has filed his/her complaint with the professional.

The request must be filed with the CSSF in writing, either by regular mail at the address of the CSSF (as published on its website), or by fax addressed to the CSSF (to the number published on its website), or by email (to the address as published on its website), or online on the CSSF's website. In order to facilitate the filing of a request, the CSSF publishes a form on its website.

The request must be substantiated and accompanied by the following documents:

- a detailed and chronological statement of the facts underlying the complaint and the steps already taken by the applicant;
- a copy of the prior complaint referred to in paragraph (1);
- a copy of the answer to the prior complaint or the confirmation by the applicant that he/she did not receive an answer one month after he/she sent his/her prior complaint;
- the statement of the applicant that he/she did not refer the matter to a court, an arbitrator or another out-of-court complaint resolution body in Luxembourg or abroad;
- the applicant's agreement concerning the conditions for the involvement of the CSSF as the body responsible for the out-of-court resolution of his/her complaint;
- the express authorisation of the applicant so that the CSSF can transmit its request (including the attachments) as well as any future correspondence or information to the professional concerned by the request;
- in the case where a person acts on behalf of an applicant in accordance with paragraph (7) or on behalf of a legal person, a document showing that the person is legally entitled so to act;
- a copy of a valid ID document of the applicant (natural person) or, where the applicant is a legal person, of the natural person representing this legal person.

The CSSF may request the production of any other document or information, in any form whatsoever, which it considers useful for handling the request.

Where the CSSF receives a request that meets all the conditions referred to in Article 4 and in paragraphs (1) to (3), it transmits a copy thereof to the professional, with the request to take a position within a period up to one month from the date the file was sent. The CSSF informs the applicant of such transmission.

As soon as the CSSF is in possession of all the documents or relevant information, it confirms to the applicant and to the professional in writing, or by way of a durable medium, that it has received the complete request and the date of receipt thereof.

Within three weeks following receipt of the complete request, the CSSF, in case it is not in a position to process the request, provides the two parties with a detailed explanation as to the reasons why it has not accepted to process the request. Within the same period of three weeks, the CSSF informs the parties if it accepts to process the request.

(3) Languages

The request shall be filed in Luxembourgish, German, English or French. The procedure will, in principle, be conducted in whichever of the aforementioned languages the request was filed with the CSSF.

(4) Analysis by the CSSF of the file relating to the request

The analysis of the file relating to the request starts when the CSSF receives the complete request in accordance with paragraph (2).

While analysing the file relating to the request, the CSSF may request the professional and the applicant to provide it with additional information, documents or explanations, in any form whatsoever, and to take a position on the facts or opinions as presented by the other party within a reasonable period that cannot exceed three weeks.

(5) Reasoned conclusion of the CSSF

Where the analysis of the file relating to the request is completed, the CSSF sends a conclusion letter to the parties, containing the reasons for the position taken. Where it concludes that the request is totally or partly justified, it asks the parties to contact each other to settle their dispute in view of the reasoned conclusion and to inform it of the follow-up actions taken.

Where the CSSF reaches the conclusion that the positions of the parties are irreconcilable or unverifiable, it informs the parties thereof in writing.

The parties are informed that the conclusions reached by the CSSF after the analysis of the request may be different from the order of a court applying legal provisions.

The parties are also informed that, the reasoned conclusions of the CSSF not being binding on the parties, they are free to accept or refuse to follow them. In the conclusion letter, the parties' attention is also drawn to the possibility to appeal through judicial proceedings, in particular if the parties fail to reach an agreement after the CSSF issued its reasoned conclusion.

The CSSF requests, in its reasoned conclusion, that the parties inform it within a reasonable period set out in the letter if they have decided to accept, refuse or follow the solution proposed by the CSSF.

(6) Duration of the procedure

As regards the requests referred to in Article 2 (1), points 1, 2, 4, 6 and 7, the CSSF issues a reasoned conclusion within 90 days.

The 90-day period begins when the CSSF receives a complete request that meets the conditions of paragraph (2). The written confirmation referred to in paragraph (2) informs the parties of the date at which the 90-day period begins.

The 90-day period may be extended in the case of highly complex files. In this event, the CSSF informs the parties of the approximate necessary extension, as soon as possible and at the latest before the end of the 90-day period.

(7) Representation and assistance

The parties have access to the procedure without having to resort to a lawyer or legal counsel. However, the parties to the procedure may seek an independent opinion or be represented or assisted by a third party at all stages of the procedure.

(8) Written procedure and retention of documents

The procedure shall be in writing. However, if the CSSF deems it necessary for the examination of the file, it may convene one or more meetings with the parties.

The parties shall attach to their correspondence copies of documents which are useful for the examination of their request and shall keep the original versions of these documents.

(9) Closing of the procedure

The procedure ends:

– by sending a reasoned conclusion letter within the meaning of the first sub-paragraph of paragraph (5), or by sending a letter within the meaning of the second sub-paragraph of paragraph (5) in which the CSSF communicates the outcome of the procedure to the parties;

- by reaching an amicable agreement between the professional and the applicant during the procedure of which the CSSF has been informed;

- in case of a written withdrawal by one of the parties, which may occur at any time during the procedure and which must be notified to the other party and to the CSSF within a reasonable period, in writing or by way of a durable medium;

- where the right on which the complaint is based is prescribed and where the professional claims that the time period for exercising that right has expired;

- where the complaint has been submitted to a Luxembourg or foreign court or arbitrator;

- where the complaint has been submitted to an out-of-court complaint resolution body, other than the CSSF, in Luxembourg or abroad;

- where the applicant does not provide the additional documents, information, explanations or positions requested by the CSSF within the period set by the CSSF, which cannot exceed three weeks.

(10) Specific provisions as regards the requests referred to in points (3) and (5) of Article 2 (1) (requests submitted by any other interested party, including consumer associations and users of payment services).

(11) Paragraphs (1) (prior complaint to the person responsible for the handling of complaints at the level of the management of the professional referred to in the complaint) and (6) (handling of the requests by the CSSF within 90 days) above do not apply to the requests referred to in points 3 and 5 of Article 2 (1).

Article 6
Data protection

The CSSF takes the necessary measures to ensure that the processing of personal data complies with the rules in force for the protection of personal data.

Article 7
Confidentiality

The parties to the procedure before the CSSF undertake to maintain the confidentiality of the communications and documents exchanged during the procedure.

The agents in charge of handling requests for the out-of-court resolution of complaints within the CSSF are bound by the obligation of professional secrecy referred to in Article 16 of the Law of 23 December 1998 creating a commission for the supervision of the financial sector.

Article 8
Agents in charge of handling the requests

(1) The agents in charge of handling requests for the out-of-court resolution of complaints within the CSSF have the necessary knowledge, skills and experience to do so.

(2) The agent shall immediately inform the CSSF of any circumstance likely to affect or to be considered as affecting his/her independence and his/her impartiality, or likely to give rise to conflicts of interest with either party to the dispute which he/she is in charge of resolving. The obligation to communicate these circumstances is a continuing obligation throughout the process.

(3) If, within the context of the examination of a request, the agents find that a question of a prudential nature arises, the scope of which goes beyond that of the request, they transmit the required information internally for that purpose and the CSSF may act on it as part of its prudential supervision.

Any action taken by the CSSF as part of its prudential supervision cannot be disclosed to the parties due to its obligation of professional secrecy.

The procedure continues regardless of the development of any potential case concerning prudential supervision.

Article 9
Cost of the procedure

Out-of-court complaint resolution before the CSSF is free of charge. Moreover, no charges will be reimbursed to the parties.

Article 10
Prescription period

Unless the law provides otherwise, in particular where the request concerns a consumer dispute within the meaning of point (5) of Article L. 411-1(1) of the Consumer Code, recourse to the procedure does not suspend the prescription period under common law in relation to the subject matter of the request.

Article 11
Referral to the courts

The parties shall at all times reserve the right to refer the subject matter of the complaint to the courts.

Article 12
International cooperation

Within the context of the out-of-court resolution of cross-border complaints, the CSSF cooperates with the competent foreign bodies, in accordance with the laws and regulations governing this cooperation.

The CSSF cooperates in particular with FIN-NET, the European network of which the CSSF is a member, in order to facilitate access for consumers to out-of-court procedures for complaints and to the settlement of cross-border cases.

Article 13
Annual report

The CSSF's annual report describes its activities as regards the out-of-court resolution of complaints.

Section 2
Provisions applicable to professionals

Article 14
Purpose

The purpose of this section is to specify certain obligations incumbent on professionals in relation to the handling of complaints.

Article 15
Complaint handling by professionals and disclosure requirements

(1) Each professional shall have a complaint management policy that is defined, endorsed and implemented by the management of the professional.

The complaint management policy shall be set out in a written document and shall be formalised in an internal complaint resolution procedure made available to all relevant staff.

This procedure shall be efficient and transparent, with a view to the reasonable and prompt handling of complaints in full compliance with the provisions of this Regulation. It shall reflect the concern for objectivity and for ascertaining the truth.

It shall also enable the identification and mitigation of any potential conflicts of interests.

(2) Where the complainant did not obtain an answer or a satisfactory answer at the level at which he/she submitted his/her complaint in the first instance, the internal procedure shall give him/her the opportunity to raise the complaint to the level of the professional's management. In this respect, the professional shall provide the contact details of a person responsible at that level.

(3) The person responsible at management level is in charge of the implementation and the efficient operation of a structure as well as the internal procedure for complaint handling referred to in paragraph (1). Subject to prior information of the CSSF on the arrangements for ensuring that the full application of the provisions of this section remains assured, the person responsible at management level may delegate the management of the complaints internally.

The professional shall ensure that each complaint as well as each measure taken to handle it is properly registered.

Moreover, he/she shall ensure that each complainant is informed of the name and contact details of the person in charge of his/her file.

(4) The professionals shall provide clear, comprehensible, precise and up-to-date information on their complaint-handling procedures, including:

(i) details of how to complain (type of information to be provided by the complainant, identity and contact details of the person or of the department to whom the complaint should be directed, etc.);

(ii) the procedure that will be followed to handle the complaint (the moment when the professional acknowledges receipt thereof, an indicative timetable for handling the complaint, the existence of the procedure for out-of-court resolution of complaints before the CSSF, where appropriate, the commitment of the professional to resort to the out-of-court complaint resolution procedure, etc.).

The professionals shall publish the details of their complaint resolution procedure and the information on the CSSF acting as an out-of-court complaint resolution body in a clear, comprehensible and easily accessible manner via their website, if any, and, where appropriate, in brochures, leaflets, contractual documents.

A written acknowledgement of receipt will be provided to the complainant within a period which shall not exceed 10 business days after receipt of the complaint, unless the answer itself is provided to the complainant within this period.

The professionals shall keep the complainants informed of the development of their complaints.

The professionals shall:

(i) seek to gather and to investigate all relevant evidence and information on each complaint;

(ii) seek to communicate in a plain and easily comprehensible language;

(iii) provide an answer without undue delay and in any case within a period which cannot exceed one month between the date of receipt of the complaint and the date at which the answer to the complainant was sent. Where an answer cannot be provided within this period, the professional shall inform the complainant of the causes of the delay and indicate the date at which its examination is likely to be achieved.

(5) Where the complaint handling at the level of the responsible person referred to in paragraph (2) has not resulted in a satisfactory answer for the complainant, the professional shall provide him/her with a full explanation of his/her position as regards the complaint.

The professional shall inform the complainant on paper or on another durable medium of the existence of the out-of-court complaint resolution procedure at the CSSF.

Where appropriate, the professional confirms his/her decision to have recourse to the out-of-court complaint resolution procedure to resolve the dispute.

Where the professional has undertaken to resort to the out-of-court complaint handling procedure with the CSSF, he/she shall send to the complainant a copy of this Regulation or the reference to the CSSF website, as well as the different means of contacting the CSSF to file a request.

The professional shall inform the complainant, on paper or on any other durable medium that he/she can file a request with the CSSF and that, in this case, his/her request must be filed with the CSSF within one year after he/she has filed his/her complaint with the professional.

In the case of complaints within the meaning of point (5) of Article L. 411-1(1) of the Consumer Code, evidence of the existence and accuracy of the information provided and the date at which it was provided is incumbent on the professional.

(6) The professionals shall analyse the data relating to the complaint handling, on a permanent basis, in order to enable the identification and treatment of any recurring or systemic problem, as well as any potential legal and operational risks, for example:

(i) by analysing the causes of the individual complaints in order to identify the common origin of certain types of complaints;

(ii) by considering whether these origins may also affect other processes or products, including those to which the complaints do not relate directly; and

(iii) by correcting these origins, if it is reasonable to do so.

Article 16
Communication of information to the CSSF

(1) The internal procedure for complaint handling at each professional shall also cover the communication with the CSSF within this general framework as well as within the framework of the procedure at the CSSF, as described in particular in the first section.

(2) The professionals are required to provide the CSSF with an as comprehensive as possible answer and cooperation within the context of the handling of complaints and requests.

(3) The responsible person referred to in Article 15(3) is required to communicate to the CSSF, on an annual basis, a table including the number of complaints registered by the professional, classified by type of complaints, as well as a summary report of the complaints and of the measures taken to handle them.

To this end, the internal procedure of the professional shall organise the communication to the responsible person referred to in the preceding sub-paragraph of all necessary data in respect of the complaints received.

Section 3
General provisions

Article 17
Repeal and entry into force

CSSF Regulation No. 13-02 relating to the out-of-court resolution of complaints is repealed and replaced by this Regulation.

This Regulation shall enter into force with its publication in the *Mémorial*.

Article 18
Publication

This Regulation shall be published in the *Mémorial* and on the CSSF website.

Luxembourg, 26 October 2016

6.

CSSF REGULATION NO. 10-05 (coordinated version)

TRANSPOSING COMMISSION DIRECTIVE 2010/44/EU OF 1 JULY 2010 IMPLEMENTING DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS CERTAIN PROVISIONS CONCERNING FUND MERGERS, MASTER-FEEDER STRUCTURES AND NOTIFICATION PROCEDURE

CSSF Regulation No. 10-5 (coordinated version) transposing Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure

The Executive Board of the Commission for the Supervision of the Financial Sector,

Having regard to Article 108*bis* of the Constitution;

Having regard to the amended Law of 23 December 1998 creating a commission for the supervision of the financial sector, and especially its Article 9 (2);

Having regard to the Law of 17 December 2010 concerning undertakings for collective investment implementing into Luxembourg law Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

Having regard to Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure.

Adopts:

CHAPTER I
GENERAL

Article 1
Subject matter

This Regulation states the implementing measures of the Law of 17 December 2010 concerning undertakings for collective investment, by laying down the detailed rules for the implementation concerning:

(1) the detailed content, form and the method by which appropriate information shall be provided by merging UCITS and receiving UCITS to their respective unitholders on a merger in order to enable unitholders to make an informed judgment of the impact of a merger on their investment and to exercise their right to approve mergers and the right to request, without any charges other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with a similar investment policy and managed by the same management company or by another company with which the management company is linked by common management or control, or by a substantial direct or indirect holding;

(2) the content of the agreement or of the internal conduct of business rules into which the feeder UCITS shall enter into with the master UCITS and the application procedures for approval in the event of a liquidation, merger or division of a master UCITS;

(3) the information to be included in the information-sharing agreement which the depositaries enter into if the master and feeder UCITS have different depositaries in order to ensure the fulfilment of the duties of both depositaries and to identify the types of irregularities which are deemed to have a negative impact on the feeder UCITS and about which the depositary of the master UCITS has to inform the competent authorities of the master UCITS' home Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS;

(4) the content of the information-sharing agreement which the approved statutory auditors or, as the case may be, the independent auditor(s) shall enter into if the master UCITS does not have the same approved statutory auditor or, as the case may be, independent auditor(s) as the feeder UCITS;

(5) the form and method by which information shall be provided by a feeder UCITS to its unitholders which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS; and

(6) the complete information on the laws, regulations and administrative provisions which are specifically relevant to the measures taken with a view to the marketing within their territory of units of UCITS established in another Member State which shall be readily accessible remotely by electronic means as well as any other means in order to facilitate access by the competent UCITS host Member State to the information and the notification letter that a UCITS which proposes to market its units in a Member State other than the UCITS home Member State, shall first be submitted to the competent authorities of its home Member State.

Article 2
Definitions

For the purpose of this Regulation, the following definitions shall apply:

(1) "CSSF" shall mean the *Commission de Surveillance du Secteur Financier* (the Commission for the Supervision of the Financial Sector);

(2) "synthetic risk and reward indicators" means synthetic indicators within the meaning of Article 8 of Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website;

(3) "Directive 2009/65/EC" shall mean the Directive of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

(4) "Law of 17 December 2010 concerning undertakings for collective investment" shall mean the Law of 17 December 2010 concerning undertakings for collective investment and implementing Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), and amending the amended Law of 20 December 2002 concerning undertakings for collective investment; the amended Law of 3 February 2007 relating to specialised investment funds; and Article 156 of the amended Law of 4 December 1997 on income tax;

(5) "rebalancing of the portfolio" means a significant modification of the composition of the portfolio of a UCITS.

CHAPTER II
UCITS MERGERS

Section 1
Content of the merger information

Article 3
General rules regarding the content of information to be provided to unitholders

(1) The information to be provided to unitholders pursuant to Article 72, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment shall be written in a concise manner and in non-technical language that enables unitholders to make an informed judgment of the impact of the proposed merger on their investment.

In the case of a proposed cross-border merger, the merging UCITS established in Luxembourg or the receiving UCITS established in Luxembourg shall explain in plain language any term or procedure relating to the other UCITS which differ from those commonly used in Luxembourg.

(2) The information to be provided to the unitholders of the merging UCITS established Luxembourg shall meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation. It shall draw their attention to the key investor information of the receiving UCITS and emphasise the desirability of reading it.

(3) The information to be provided to the unitholders of the receiving UCITS established in Luxembourg shall focus on the operation of the merger and its potential impact on the receiving UCITS established in Luxembourg.

Article 4

Specific rules regarding the content of information to be provided to unitholders

(1) The information to be provided in accordance with Article 72, paragraph (3), point b) of the Law of 17 December 2010 concerning undertakings for collective investment to the unitholders of the merging UCITS established in Luxembourg shall also include:

a) details of any differences in the rights of unitholders of the merging UCITS established in Luxembourg before and after the proposed merger takes effect;

b) if the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;

c) a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information;

d) if the merging UCITS established in Luxembourg applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;

e) if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unitholders who previously held units in the merging UCITS established in Luxembourg;

f) in cases where Article 74 of the Law of 17 December 2010 concerning undertakings for collective investment permits costs associated with the preparation and completion of the merger to be charged to either the merging or the receiving UCITS or any of their unitholders, details of how those costs are to be allocated;

g) an explanation of whether the investment company established in Luxembourg or the management company of the merging UCITS established in Luxembourg intends to undertake any rebalancing of the portfolio before the merger takes effect.

(2) The information to be provided in accordance with Article 72, paragraph (3), point b) of the Law of 17 December 2010 concerning undertakings for collective investment to the unitholders of the receiving UCITS established in Luxembourg shall also include an explanation of whether the investment company established in Luxembourg or the management company of the receiving UCITS established in Luxembourg expects the merger to have any material impact on the portfolio of the receiving UCITS established in Luxembourg, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

(3) In accordance with Article 72, paragraph (3), point c) of the Law of 17 December 2010 concerning undertakings for collective investment, merging UCITS and/or receiving UCITS established in Luxembourg shall provide certain information to their respective unitholders. This information shall also include:

a) details of how any accrued income in the respective UCITS is to be treated;

b) an indication of how the report of the approved statutory auditor or, as the case may be, the independent auditor referred to in Article 71, paragraph (3) of the Law of 17 December 2010 concerning undertakings for collective investment may be obtained.

(4) The information to be provided in accordance with Article 72, paragraph (3), point d) of the Law of 17 December 2010 concerning undertakings for collective investment shall include:

a) where relevant, whether, under the provisions of Article 66, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment applicable to the merging UCITS established in Luxembourg and, where applicable, to the receiving UCITS established in Luxembourg, unitholders are required to approve the merger proposal, the procedure by which unitholders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;

b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently;

c) when the merger will take effect in accordance with Article 75, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment.

(5) If the terms of the proposed merger include provisions for a cash payment in accordance with Article 1, point 20) a) and b) of the Law of 17 December 2010 concerning undertakings for collective investment, the information to be provided to unitholders of the merging UCITS established in Luxembourg shall contain all details of such proposed payment, and shall include in particular when and how unitholders of the merging UCITS established in Luxembourg will receive the cash payment.

(6) In cases where, according to the provisions of Article 66, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment applicable to the merging UCITS established in Luxembourg and, as the case may be to the receiving UCITS established in Luxembourg, the merger proposal must be approved by the unitholders, the information may contain a recommendation by the respective management company or board of directors of the investment company established in Luxembourg as to the course of action.

(7) The merging UCITS established in Luxembourg shall inform the unitholders on:

a) the period during which the unitholders shall be able to continue making subscriptions and requesting redemptions of units in the merging UCITS established in Luxembourg;

b) the time when those unitholders not making use of their rights granted pursuant to Article 73, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment, within the relevant time limit, shall be able to exercise their rights as unitholders of the receiving UCITS;

c) an explanation that in cases where the merger proposal must be approved by the unitholders of the merging UCITS established in Luxembourg according to the provisions of Article 66, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment applicable to the UCITS established in Luxembourg and the proposal is approved by the necessary majority, those unitholders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted pursuant to Article 73, paragraph (1) of the Law of 17

December 2010 concerning undertakings for collective investment within the relevant time limit, shall become unitholders of the receiving UCITS.

(8) If a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided.

Article 5
Key investor information

(1) An up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unitholders of the merging UCITS established in Luxembourg.

(2) The key investor information of the receiving UCITS established in Luxembourg shall be provided to existing unitholders of the receiving UCITS established in Luxembourg where it has been amended for the purpose of the proposed merger.

Article 6
New unitholders

Between the date when the information document pursuant to Article 72, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment is provided to unitholders and the date when the merger takes effect, the merging and/or receiving UCITS established in Luxembourg shall provide the information document and the up-to-date key investor information of the receiving UCITS to each person who purchases or subscribes units in either the merging or the receiving UCITS or asks to receive copies of the fund rules or instruments of incorporation, prospectus or key investor information of either UCITS.

Section 2
Method of providing the information

Article 7
Method of providing the information to unitholders

(1) The merging and/or the receiving UCITS established in Luxembourg shall provide the information pursuant to Article 72, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment to unitholders on paper or in another durable medium.

(2) Where the information shall be provided to all or certain unitholders using a durable medium other than paper, the following conditions shall be fulfilled:

a) the provision of the information shall be appropriate to the context in which the business between the unitholder and the merging or receiving UCITS or, where relevant, the respective management company is, or is to be, carried on;

b) the unitholder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, specifically chooses the durable medium other than paper.

(3) For the purposes of paragraphs (1) and (2) above, the provision of information by means of electronic communication shall be treated as appropriate to the context in which the business between the merging or[1] receiving UCITS established in Luxembourg or their respective management companies and the unitholder is, or is to be, carried on if there is evidence that the unitholder has regular access to the Internet. The provision by the unitholder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

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[1] English and German Directives 2010/42/EC use "and"; the French Directive 2010/42/EC and the French version of this Regulation "or".

CHAPTER III
MASTER-FEEDER STRUCTURES

Section 1
Agreement and internal conduct of business rules between feeder UCITS and master UCITS

Sub-section 1: *Content of the agreement between master UCITS and feeder UCITS*

Article 8
Access to information

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment shall include the following with regard to access to information:

a) how and when the master UCITS provides the feeder UCITS with a copy of its fund rules or instruments of incorporation, prospectus and key investor information or any amendment thereof;

b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with Article 110 of the Law of 17 December 2010 concerning undertakings for collective investment;

c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;

d) what details of breaches by the master UCITS of the law, the fund rules or instruments of incorporation or[2] the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of and the manner and timing thereof;

e) where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged by point a) of Article 77, paragraph (2) sub-paragraph two of the Law of 17 December 2010 concerning undertakings for collective investment;

f) a statement that the master UCITS informs the feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.

Article 9
Basis of investment and disinvestment by the feeder UCITS

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment shall include the following with regard to the basis of investment and disinvestment by the feeder UCITS:

a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;

c) if applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

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[2] English and German Directives 2010/42/EC use "and"; the French Directive and Regulation "or".

Article 10
Standard dealing arrangements

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment shall include the following with regard to standard dealing arrangements:

a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

b) coordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;

c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

d) where necessary, other appropriate measures to ensure compliance with the requirements of Article 79, paragraph (2) of the Law of 17 December 2010 concerning undertakings for collective investment;

e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

f) settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Article 79, paragraphs (4) and (5) of the Law of 17 December 2010 concerning undertakings for collective investment;

g) procedures to ensure enquiries and complaints from unitholders are handled appropriately;

h) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Article 11
Events affecting dealing arrangements

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment shall include the following with regard to events affecting dealing arrangements:

a) the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of repurchase, redemption, purchase or subscription of units of that UCITS;

b) arrangements for notifying and resolving pricing errors in the master UCITS.

Article 12
Standard arrangements for the audit report

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment shall include the following with regard to standard arrangements for the audit report:

a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;

b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master

UCITS to enable it to produce its periodic reports on time and which ensure that the independent auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the feeder UCITS in accordance with Article 81, paragraph (2), sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment.

Article 13
Changes to standing arrangements

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment shall include the following with regard to changes to standing arrangements:

a) the manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its fund rules or instruments of incorporation, prospectus and key investor information, if these details differ from the standard arrangements for notification of unitholders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;

b) the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger, or division;

c) the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;

d) the manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its approved statutory auditor (or, as the case may be, its independent auditor) or any third party which is mandated to carry out investment management or risk management functions;

e) the manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

Article 14
Choice of the applicable law

(1) Where the feeder UCITS and the master UCITS are established in Luxembourg, the agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment shall provide that the Luxembourg law shall apply to the agreement and that both parties agree to the exclusive jurisdiction of the Luxembourg courts.

(2) Where the feeder UCITS and the master UCITS are established in different Member States but one of them is established in Luxembourg, the agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment or Article 60 paragraph (1) sub-paragraph one of Directive 2009/65/EC shall provide that the applicable law shall be either the law of the Member State in which the feeder UCITS is established or that it shall be that of the Member State in which the master UCITS is established and that both parties agree to the exclusive jurisdiction of the courts of the Member State whose law they have stipulated to be applicable to the agreement.

Sub-section 2: Content of the internal conduct of business rules

Article 15
Conflicts of interest

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 concerning undertakings for collective investment shall include appropriate measures to mitigate conflicts of interest that may arise between the feeder UCITS and the master UCITS, or between the feeder UCITS and other unitholders of the master UCITS, to the extent that these are not sufficiently addressed by the measures applied by the

management company in order to meet requirements of Article 109, paragraph (1), point b) and Article 111, point d) of the Law of 17 December 2010 concerning undertakings for collective investment and Chapter III of CSSF Regulation No. 10-4 transposing Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

Article 16
Basis of investment and divestment by the feeder UCITS

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 concerning undertakings for collective investment shall include at least the following with regard to the basis of investment and divestment by the feeder UCITS:

a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;

c) where applicable, the terms on which any initial or subsequent transfer of assets may be made from the feeder UCITS to the master UCITS.

Article 17
Standard dealing arrangements

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 concerning undertakings for collective investment shall include at least the following with regard to standard dealing arrangements:

a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

b) coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, the role of transfer agents or any other third party;

c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

d) appropriate measures to ensure compliance with the requirements of Article 79, paragraph (2) of the Law of 17 December 2010 concerning undertakings for collective investment;

e) where the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

f) settlement cycles and payment details for purchases and redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Article 79, paragraphs (4) and (5) of the Law of 17 December 2010 concerning undertakings for collective investment;

g) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Article 18
Events affecting dealing arrangements

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 concerning undertakings for collective investment shall include at least the following with regard to events affecting dealing arrangements:

a) the manner and timing of notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption or subscription of units of UCITS;

b) arrangements for notifying and resolving pricing errors in the master UCITS.

Article 19
Standard arrangements for the audit report

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 concerning undertakings for collective investment shall include at least the following with regard to standard arrangements for the audit report:

a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;

b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the internal auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with Article 81, paragraph (2) sub-paragraph one of the Law of 17 December 2010 concerning undertakings for collective investment.

Section 2
Liquidation, merger or division of the master UCITS

Sub-section 1: Procedures in the event of a liquidation

Article 20
Application for approval

(1) The feeder UCITS established in Luxembourg shall submit to the CSSF no later than two months after the date on which the master UCITS informed it of the binding decision to liquidate, the following:

a) where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS in accordance with Article 79, paragraph (4), point a) of the Law of 17 December 2010 concerning undertakings for collective investment:

i) its application for approval for that investment;

ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

iii) the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 concerning undertakings for collective investment, respectively;

iv) the other documents required pursuant to Article 78, paragraph (3) of the Law of 17 December 2010 concerning undertakings for collective investment;

b) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Article 79, paragraph (4), point b) of the Law of 17 December 2010 concerning undertakings for collective investment:

i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

ii) the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 concerning undertakings for collective investment, respectively;

c) where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) By way of derogation from paragraph (1), where the master UCITS informed the feeder UCITS established in Luxembourg of its binding decision to liquidate more than five months before the date at which the liquidation will start, the feeder UCITS established in Luxembourg shall submit to the CSSF its application or notification in accordance with one of the points a), b) or c) of paragraph (1) at the latest three months before that date.

(3) The feeder UCITS established in Luxembourg shall inform its unitholders of its intention to be liquidated without undue delay.

Article 21
Approval

(1) The feeder UCITS established in Luxembourg shall be informed within 15 working days following the complete submission of the documents referred to in point a) or b) of Article 20, paragraph (1) of the present Regulation respectively, whether the CSSF has granted the required approvals.

(2) On receiving the CSSF's approval pursuant to paragraph (1), the feeder UCITS established in Luxembourg shall inform the master UCITS of it.

(3) The feeder UCITS established in Luxembourg shall take necessary measures to comply with the requirements of Article 83 of the Law of 17 December 2010 concerning undertakings for collective investment as soon as possible after the CSSF has granted the necessary approvals pursuant to Article 20, paragraph (1), point a) of this Regulation.

(4) Where the payment of liquidation proceeds of the master UCITS is to be executed before the date on which the feeder UCITS established in Luxembourg is to start to invest in either a different master UCITS pursuant to Article 20, paragraph (1), point a) of this Regulation or in accordance with its new investment objectives and policy pursuant to Article 20, paragraph (1), point b) of this Regulation, the CSSF shall grant approval subject to the following conditions:

a) the feeder UCITS shall receive the proceeds of the liquidation:

i) in cash; or

ii) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS established in Luxembourg so wishes and where the agreement between the feeder UCITS established in Luxembourg and the master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for it;

b) any cash held or received in accordance with this paragraph may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

Where point a) ii) of the first subparagraph applies, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

Sub-section 2: Procedures in the event of a merger or division

Article 22
Application for approval

(1) The feeder UCITS established in Luxembourg shall submit to the CSSF, no later than one month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with Article 79, paragraph (5) sub-paragraph two of the Law of 17 December 2010 concerning undertakings for collective investment, the following:

a) where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:

i) its application for approval thereof;

ii) where applicable, its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

iii) where applicable, the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 concerning undertakings for collective investment, respectively;

b) where the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS not resulting from the merger or division:

i) its application for approval of that investment;

ii) its application for approval of the proposed amendments to its fund rules or instruments of incorporation;

iii) the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 concerning undertakings for collective investment, respectively;

iv) the other documents required pursuant to Article 78, paragraph (3) of the Law of 17 December 2010 concerning undertakings for collective investment;

c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Article 79 paragraph (4), point b) of the Law of 17 December 2010 concerning undertakings for collective investment:

i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

ii) the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 concerning undertakings for collective investment, respectively;

d) where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) For the purpose of the application of points a) and b) of paragraph (1) the following should be taken into account:

(a) The expression "continues to be a feeder UCITS of the same master UCITS" refers to cases where:

(i) the master UCITS is the receiving UCITS in a proposed merger;

(ii) the master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division.

(b) The expression "becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS" refers to cases where:

(i) the master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unitholder of the receiving UCITS;

(ii) the feeder UCITS becomes a unitholder of a UCITS resulting from a division that is materially different to the master UCITS.

(3) By way of derogation from paragraph (1), in cases where the master UCITS provided the information referred to in or comparable with Article 43 of Directive 2009/65/EC to the feeder UCITS established in Luxembourg more than four months before the proposed effective date, the feeder UCITS established in Luxembourg shall submit to the CSSF its application or notification in accordance with one of the points a) to d) of paragraph (1) of this Article at the latest three months before the proposed effective date of the merger or division of the master UCITS.

(4) The feeder UCITS established in Luxembourg shall inform its unitholders of its intention to be liquidated without undue delay.

Article 23
Approval

(1) The feeder UCITS established in Luxembourg shall be informed within 15 working days following the complete submission of the documents referred to in Article 22, paragraph (1), points a) to c) of this Regulation, respectively, whether the CSSF has granted the required approvals.

(2) Upon receipt of the information that the CSSF has granted approval according to paragraph (1), the feeder UCITS established in Luxembourg shall inform the master UCITS of it.

(3) After the feeder UCITS established in Luxembourg has been informed that the CSSF has granted the necessary approvals pursuant to Article 22, paragraph (1), point b) of this Regulation, the feeder UCITS established in Luxembourg shall take the necessary measures to comply with the requirements of Article 83 of the Law of 17 December 2010 concerning undertakings for collective investment without undue delay.

(4) In the cases of Article 22, paragraph (1), points b) and c) of this Regulation, the feeder UCITS established in Luxembourg shall exercise the right to request repurchase and redemption of its units in the master UCITS in accordance with Article 79, paragraph (5) sub-paragraph three and with Article 73, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment respectively Article 60, paragraph (5), sub-paragraph three and Article 45, paragraph (1) of Directive 2009/65/EC, where the CSSF has not granted the necessary approvals required pursuant to Article 22, paragraph (1) of this Regulation by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is effected.

The feeder UCITS established in Luxembourg shall also exercise this right in order to ensure that the right of its own unitholders to request repurchase or redemption of their units in the feeder UCITS according to Article 83, paragraph (1), point d) of the Law of 17 December 2010 concerning undertakings for collective investment is not affected.

Before exercising the right referred to in the first sub-paragraph, the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unitholders.

(5) Where the feeder UCITS requests repurchase or redemption of its units in the master UCITS, it shall receive one of the following:

a) the repurchase or redemption proceeds in cash;

b) some or all of the repurchase or redemption proceeds as a transfer in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and the master UCITS provides for it.

Where point b) of the first sub-paragraph applies, the feeder UCITS established in Luxembourg may realise any part of the transferred assets for cash at any time.

(6) The CSSF shall grant approval on the condition that any cash held or received in accordance with paragraph (5) may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS established in Luxembourg is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

Section 3
Depositaries and auditors

Sub-section 1: Depositaries

Article 24
Content of the information-sharing agreement between depositaries

The information-sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS referred to in Article 80, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment shall include the following:

a) the identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether such information or documents are provided by one depositary to the other or made available on request;

b) the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;

c) the coordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:

i) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with Article 60, paragraph (2) of Directive 2009/65/EC;

ii) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;

d) the coordination of accounting year-end procedures;

e) what details of breaches by the master UCITS of the law and the fund rules or instrument of incorporation the depositary of the master UCITS shall provide to the depositary of the feeder UCITS and the manner and timing of their provision;

f) the procedure for handling ad hoc requests for assistance from one depositary to the other;

g) identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and the manner and timing in which this will be done.

Article 25
Choice of the applicable law

(1) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 79, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment or Article 60, paragraph (1) of Directive 2009/65/EC, the agreement between the depositaries of the master UCITS and the feeder UCITS shall provide that the law of the Member State applying to that agreement in accordance with Article 14 of this Regulation shall also apply to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive jurisdiction of the courts of that Member State;

(2) Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 concerning undertakings for collective investment or the third subparagraph of Article 60 paragraph (1) of Directive 2009/65/EC, the agreement between the depositaries of the master UCITS and the feeder UCITS shall provide that the law applying to the information-sharing agreement between both depositaries shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both depositaries agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

Article 26
Reporting of irregularities by the depositary of the master UCITS

The irregularities referred to in Article 80, paragraph (2) of the Law of 17 December 2010 concerning undertakings for collective investment which the depositary of the master UCITS detects in the course of carrying out its function under the national law and which may have a negative impact on the feeder UCITS shall include, but are not limited to:

a) errors in the net asset value calculation of the master UCITS;

b) errors in transactions for or settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;

c) errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;

d) breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information;

e) breaches of investment and borrowing limits set out in national law or in the fund rules, instruments of incorporation, prospectus or key investor information.

Sub-section 2: Auditors

Article 27

Information-sharing agreement between approved statutory auditors (or, as the case may be, between the approved statutory auditor and the independent auditor)

(1) The information-sharing agreement between the approved statutory auditor of the master UCITS and the approved statutory auditor of the feeder UCITS referred to in Article 81, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment shall include the following:

a) the identification of the documents and categories of information which are to be routinely shared between both approved statutory auditors;

b) whether the information or documents referred to in point a) are to be provided or made available on request;

c) the manner and timing, including any applicable deadlines, of the transmission of information by the approved statutory auditor of the master UCITS to the approved statutory auditor of the feeder UCITS;

d) the coordination of the involvement of each approved statutory auditor in the accounting year-end procedures for the respective UCITS;

e) identification of matters that shall be treated as irregularities disclosed in the audit report of the approved statutory auditor of the master UCITS for the purposes of Article 81, paragraph (2) sub-paragraph 2 of the Law of 17 December 2010 concerning undertakings for collective investment;

f) the manner and timing for handling ad hoc requests for assistance from one approved statutory auditor to the other, including a request for further information on irregularities disclosed in the audit report of the approved statutory auditor of the master UCITS.

(2) The agreement referred to in paragraph (1) shall include provisions on the preparation of the audit reports referred to in Article 81, paragraph (2) and Article 154, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the approved statutory auditor of the feeder UCITS.

(3) Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in paragraph (1) shall include the manner and timing by which the approved statutory auditor of the master UCITS is to make the ad hoc report required by Article 81, paragraph (2) of the Law of 17 December 2010 on undertakings for collective investment respectively by Article 62, paragraph (2) sub-paragraph one of Directive 2009/65/EC and to provide it and drafts of it to the approved statutory auditor of the feeder UCITS.

Article 28

Choice of the applicable law

(1) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 79, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment or Article 60, paragraph (1) of Directive 2009/65/EC, the agreement between the approved statutory auditor or, as the case may be, the independent auditor of the master UCITS and the feeder UCITS shall provide that the law of the Member State applying to that agreement in accordance with Article 14 of this Regulation shall also apply to the information-sharing agreement between both approved statutory auditors (or, as the case may be, between the approved statutory auditor and the independent auditor) and that both

approved statutory auditors (or, as the case may be, the approved statutory auditor and the independent auditor) agree to the exclusive jurisdiction of the courts of that Member State.

(2) Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 concerning undertakings for collective investment, the agreement between the approved statutory auditor or, as the case may be, the independent auditor of the master UCITS and the feeder UCITS shall provide that the law applying to the information-sharing agreement between both approved statutory auditors or, as the case may be, between the approved statutory auditor and the independent auditor shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both approved statutory auditors (or, as the case may be, the approved statutory auditor and the independent auditor) agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

Section 4
Manner of providing the information to unitholders

Article 29
Manner of providing the information to unitholders

The feeder UCITS established in Luxembourg shall provide the information to unitholders pursuant to Article 83, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment in the same manner as prescribed by Article 7 of this Regulation.

CHAPTER IV
NOTIFICATION PROCEDURE

Article 30
UCITS host Member State's access to documents

(1) UCITS established in Luxembourg shall ensure that an electronic copy of each document referred to in Article 54, paragraph (2) of the Law of 17 December 2010 concerning undertakings for collective investment is made available on a website of the UCITS, or a website of the management company that manages that UCITS, or on another website designated by the UCITS in the notification letter submitted in accordance with Article 54, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment, or in any updates of it. Any document made available on a website shall be provided in an electronic format in common use.

(2) UCITS established in Luxembourg shall ensure that the UCITS host Member State has access to the website referred to in paragraph (1).

Article 31
Updates of documents

Any document attached to the e-mails in relation to updates or amendments to the documents referred to in Article 54, paragraph (2) of the Law of 17 December 2010 concerning undertakings for collective investment shall be provided by the UCITS in a commonly used electronic format.

Article 32
Publication

This Regulation will be published in the *Mémorial* and on the website of the CSSF. This Regulation will become effective for UCITS governed by the Law of 17 December 2010 concerning undertakings for collective investment as from the day of its coming into force.

Luxembourg, 20 December 2010

7.

CSSF REGULATION NO. 10-04

TRANSPOSING COMMISSION DIRECTIVE 2010/43/EU OF 1 JULY 2010 IMPLEMENTING DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS ORGANISATIONAL REQUIREMENTS, CONFLICTS OF INTEREST, CONDUCT OF BUSINESS, RISK MANAGEMENT AND CONTENT OF THE AGREEMENT BETWEEN A DEPOSITARY AND A MANAGEMENT COMPANY

CSSF Regulation No. 10-4 transposing Commission Directive 2010/43/EU of 1 July 2010 implementing directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

The Executive Board of the Commission for the Supervision of the Financial Sector,

Having regard to Article 108*bis* of the Constitution;

Having regard to the amended Law of 23 December 1998 creating a commission for the supervision of the financial sector and especially its Article 9 (2);

Having regard to the Law of 17 December 2010 concerning undertakings for collective investment implementing into Luxembourg law Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

Having regard to Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

Adopts:

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1
Subject matter

This Regulation states the implementing measures of the Law of 17 December 2010 concerning undertakings for collective investment;

1) specifying the procedures and arrangements as referred to in Article 109, paragraph (1), point a) of the Law of 17 December 2010 concerning undertakings for collective investment, and the structures and organisational requirements to minimise conflicts of interest as referred to in Article 109, paragraph (1), point b) of the Law of 17 December 2010 concerning undertakings for collective investment;

2) establishing criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS and the criteria for determining the types of conflicts of interest, specifying the principles required to ensure that the resources are employed effectively; and defining the steps that should be taken by management companies to identify, prevent, manage or disclose the conflicts of interest referred to in Article 111 of the Law of 17 December 2010 concerning undertakings for collective investment;

3) concerning the particulars that need to be included in the agreement between the depositary and management company in accordance with Articles 18, paragraph (3) and 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment; and

4) concerning the risk management process referred to in Article 42, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment, in particular the criteria for assessing the adequacy of the risk management process employed by the management company and the risk management policy and processes and the arrangements, processes and techniques for risk measurement and management relating to such criteria.

Article 2
Scope

1. This Regulation shall apply to management companies having their registered office in Luxembourg and pursuing the activity of management of undertakings for collective investment in transferable securities (UCITS) as referred to in Article 101, paragraph (2) of the Law of 17 December 2010 concerning undertakings for collective investment.

   Chapter V of this Regulation shall also apply to depositaries carrying out their functions according to the provisions of Articles 17, 18, 19, 20, 21 and Articles 33, 34, 35, 36 and 37, respectively, of the Law of 17 December 2010 concerning undertakings for collective investment.

2. The provisions of this Chapter, Article 13 of Chapter II, and Chapters III, IV and VI shall apply *mutatis mutandis* to investment companies that have not designated a management company authorised pursuant to the Law of 17 December 2010 concerning undertakings for collective investment.

   In those cases, the terms "management company" shall be understood as "investment company".

Article 3
Definitions

For the purposes of this Regulation, the following definitions shall apply in addition to the definitions set out in the Law of 17 December 2010 concerning undertakings for collective investment:

1) "client" means any natural or legal person, or any other undertaking including a UCITS, to whom a management company provides a service of collective portfolio management or services pursuant to Article 101, paragraph (3) of the Law of 17 December 2010 concerning undertakings for collective investment;

2) "Law of 17 December 2010 concerning undertakings for collective investment" means the Law of 17 December 2010 concerning undertakings for collective investment and implementing Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), and amending the amended Law of 20 December 2002 concerning undertakings for collective investment; the amended Law of 3 February 2007 relating to specialised investment funds; and Article 156 of the amended Law of 4 December 1967 on income tax;

3) "unitholder" means any natural or legal person holding one or more units in a UCITS;

4) "relevant person" in relation to a management company, means any of the following:

   a) a director, partner or equivalent, or manager of the management company,

   b) an employee of the management company, as well as any other natural person whose services are placed at the disposal and under the control of the management company and who is involved in the provision by the management company of collective portfolio management,

   c) a natural person who is directly involved in the provision of services to the management company under a delegation arrangement to third parties for the purpose of the provision by the management company of collective portfolio management;

5) "senior management" means the persons who effectively conduct the business of a management company in accordance with Article 102, paragraph (1), point c) of the Law of 17 December 2010 concerning undertakings for collective investment;

6) "board of directors" means the board of directors of the management company;

7) "supervisory function" means the relevant persons or body or bodies responsible for the supervision of its senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with the obligations under the Law of 17 December 2010 concerning undertakings for collective investment;

8) "counterparty risk" means the risk of loss for the UCITS resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow;

9) "liquidity risk" means the risk that a position in the UCITS' portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame and that the ability of the UCITS to comply at any time with Article 11, paragraph (2) and Article 28, paragraph (1), point b) of the Law of 17 December 2010 concerning undertakings for collective investment is thereby compromised;

10) "market risk" means the risk of loss for the UCITS resulting from fluctuation in the market value of positions in the UCITS' portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's creditworthiness;

11) "operational risk" means the risk of loss for the UCITS resulting from inadequate internal processes and failures in relation to people and systems of the management company or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS.

The term "board of directors" defined in point 6 of this paragraph shall not comprise the supervisory board where management companies have a dual structure composed of a board of directors and a supervisory board.

CHAPTER II
ADMINISTRATIVE PROCEDURES AND CONTROL MECHANISM

Article 4
Subject matter and scope

This Chapter specifies the measures which the management companies are required to take in order to meet the requirements referred to in Article 109, paragraph (1), point a) and Article 110, paragraph (1), point c) of the Law of 17 December 2010 concerning undertakings for collective investment.

SECTION 1
General principles

Article 5
General requirements on procedures and organisation

1. Management companies shall:

   a) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

b) ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the management company;

d) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved;

e) maintain adequate and orderly records of their business and internal organisation.

For the purpose of the points mentioned above, management companies shall take into account the nature, scale and complexity of their business, and the nature and range of services and activities undertaken.

2. Management companies shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3. Management companies shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.

4. Management companies shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the CSSF, to deliver in a timely manner to the CSSF, financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5. Management companies shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs (1) to (4), and shall take appropriate measures to address any potential deficiencies.

Article 6
Resources

1. Management companies shall employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

2. Management companies shall retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company, especially with regard to the management of the risk associated with those arrangements.

3. Management companies shall ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those relevant persons from discharging any particular function soundly, honestly and professionally.

4. For the purposes laid down in the preceding paragraphs (1), (2) and (3), management companies shall take into account the nature, scale and complexity of their business, as well as the nature and range of services and activities undertaken.

SECTION 2
Administrative and accounting procedures

Article 7
Complaints handling

1. Management companies shall establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors.

2. Management companies shall ensure that each complaint and the measures taken for its resolution are recorded.

3. Investors shall be able to file complaints free of charge. The information regarding procedures referred to in paragraph (1) shall be made available to investors free of charge.

Article 8
Electronic data processing

1. Management companies shall make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order in order to be able to comply with Articles 15 and 16 of this Regulation.

2. Management companies shall ensure a high level of security during the electronic data processing as well as integrity and confidentiality of the recorded information, as appropriate.

Article 9
Accounting procedures

1. Management companies shall ensure the employment of accounting policies and procedures as referred to in Article 5, paragraph (4) of this Regulation so as to ensure the protection of unitholders.

   The accounts of the UCITS shall be kept in such a way that all assets and liabilities of the UCITS can be directly identified at all times.

   If a UCITS has different investment compartments, separate accounts shall be maintained for those compartments.

2. Management companies shall have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS' home Member States, so as to ensure that the calculation of the net asset value of each UCITS is accurately effected, on the basis of its accounts, and that subscription and redemption orders can be properly executed at that net asset value.

3. Management companies shall establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS, as consistent with the applicable rules referred to in Article 9, paragraphs (1) and (3) and Article 28, paragraphs (2) and (4) of the Law of 17 December 2010 concerning undertakings for collective investment.

SECTION 3
Internal control mechanisms

Article 10
Control by senior management and supervisory function

1. Management companies, when allocating functions internally, shall ensure that senior management and, where appropriate, the supervisory function, are responsible for the management company's compliance with its obligations under the Law of 17 December 2010 concerning undertakings for collective investment.

2. The management company shall ensure that its senior management:

a) is responsible for the implementation of the general investment policy for each managed UCITS, as defined, where relevant, in the prospectus, the fund rules or the instruments of incorporation of the investment company;

b) oversees the approval of investment strategies for each managed UCITS;

c) is responsible for ensuring that the management company has a permanent and effective compliance function, as referred to in Article 11 of this Regulation, even if this function is performed by a third party;

d) ensures and regularly verifies that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;

e) approves and regularly reviews the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, so as to ensure that such decisions are consistent with the approved investment strategies;

f) approves and regularly reviews the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in Article 43 of this Regulation, including the risk limit system for each managed UCITS.

3. The management company shall also ensure that its senior management and, where appropriate, its supervisory function shall:

a) assess and regularly review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations in the Law of 17 December 2010 concerning undertakings for collective investment;

b) take appropriate measures to remedy any deficiencies.

4. Management companies shall ensure that their senior management receives on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

5. Management companies shall ensure that their senior management regularly receives reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in paragraph (2), points b) to e).

6. Management companies shall ensure that the supervisory function, if any, regularly receives written reports on the matters referred to in paragraph (4).

Article 11
Permanent compliance function

1. Management companies shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the management company to comply with its obligations under the Law of 17 December 2010 concerning undertakings for collective investment, as well as the associated risks, and shall put in place adequate measures and procedures designed to minimise such risk and to enable the CSSF to exercise its powers effectively under that law.

For the purposes of the first sub-paragraph, management companies shall take into account the nature, scale and complexity of their business, as well as the nature and range of services and activities undertaken.

2. Management companies shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

a) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph (1), and the actions taken to remedy any deficiencies in the management company's compliance with its obligations;

b) to advise and assist the relevant persons responsible for carrying out services and activities in compliance with the management company's obligations under the Law of 17 December 2010 concerning undertakings for collective investment;

3. In order to enable the compliance function referred to in paragraph (2) to discharge its responsibilities properly and independently, management companies shall ensure that the following conditions are satisfied:

a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

b) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies;

c) the relevant persons involved in the compliance function must not be involved in the performance of the services or activities they monitor;

d) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

However, the CSSF shall not require a management company to comply with point c) or point d) of the first sub-paragraph where the management company is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that requirement is not proportionate and that its compliance function continues to be effective.

Article 12
Permanent internal audit function

1. Management companies, where appropriate and proportionate in view of the nature, scale and complexity of their business as well as the nature and range of collective portfolio management activities undertaken in the course of that business, shall establish and maintain an internal audit function which is separate and independent from their other functions and activities.

2. The internal audit function referred to in paragraph (1) shall have the following responsibilities:

a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the management company's systems, internal control mechanisms and other arrangements;

b) to issue recommendations based on the result of work carried out in accordance with point a);

c) to verify compliance with the recommendations referred to in point b);

d) to report in relation to internal audit matters in accordance with Article 10, paragraph (4) of this Regulation.

Article 13
Permanent risk management function

1. Management companies shall establish and maintain a permanent risk management function.

2. The permanent risk management function referred to in paragraph (1) shall be hierarchically and functionally independent from operating units.

   However, the CSSF may allow a management company to derogate from that obligation where the derogation is appropriate and proportionate in view of the nature, scale and complexity of the management company's business and of the UCITS it manages.

   A management company shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities, and that its risk management process satisfies the requirements of Article 42 of the Law of 17 December 2010 concerning undertakings for collective investment.

3. The permanent risk management function shall:

   a) implement the risk management policy and procedures;

   b) ensure compliance with the UCITS' risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with Articles 46, 47 and 48 of this Regulation;

   c) provide advice to the board of directors as regards the identification of the risk profile of each managed UCITS;

   d) provide regular reports to the board of directors and, where it exists, the supervisory function, on:

      i) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS,

      ii) the compliance of each managed UCITS with relevant risk limit systems,

      iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;

   e) provide regular reports to the senior management outlining the current level of risk incurred by each managed UCITS and any actual or foreseeable breaches of their limits, so as to ensure that prompt and appropriate action can be taken;

   f) review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in Article 49 of this Regulation.

4. The permanent risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in paragraph (3).

Article 14
Personal transactions

1. Management companies shall establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 1, paragraph (1) of the Law of 9 May 2006 on market abuse or to other confidential information relating to UCITS or transactions with or for UCITS by virtue of an activity carried out by him on behalf of the management company:

a) entering into a personal transaction which fulfils at least one of the following criteria:

i) the Law of 9 May 2006 on market abuse prohibits this person from entering into that personal transaction;

ii) it involves the misuse or improper disclosure of confidential information;

iii) it conflicts or is likely to conflict with an obligation of the management company under the Law of 17 December 2010 concerning undertakings for collective investment or under the Law of 13 July 2007 on markets in financial instruments;

b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by this paragraph, point a) or Article 28, paragraph (2), points a) or b) of the Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector, or would otherwise constitute a misuse of information relating to pending orders;

c) disclosing, other than in the normal course of his employment or contract for services and without prejudice to Article 9, sub-paragraph one of the Law of 9 May 2006 on market abuse, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

i) to enter into a transaction in financial instruments which, where a personal transaction of the relevant person would be covered by this paragraph, point a) or by Article 28, paragraph (2), points a) or b) of the Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector, or would otherwise constitute a misuse of information relating to pending orders;

ii) to advise or procure another person to enter into such a transaction.

2. The arrangements required under paragraph (1) shall in particular be designed to ensure that:

a) each relevant person covered by paragraph (1) is aware of the restrictions on personal transactions, and of the measures established by the management company in connection with personal transactions and disclosure, in accordance with paragraph (1);

b) the management company is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the management company to identify such transactions;

c) a record is kept of the personal transaction notified to the management company or identified by it, including any authorisation or prohibition in connection with such a transaction.

For the purposes of point b) of the first sub-paragraph, where certain activities are performed by third parties, the management company shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person and provides that information to the management company promptly on request.

3. Paragraphs (1) and (2) shall not apply to the following kinds of personal transactions:

a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the

portfolio manager and the relevant person or other person for whose account the transaction is executed;

b) personal transactions in UCITS or units in collective undertakings that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

4. For the purposes of paragraphs (1), (2) and (3) of this Article, "personal transaction" shall have the same meaning as in Article 11 of the Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector.

Article 15
Recording of portfolio transactions

1. Management companies shall ensure, for each portfolio transaction relating to UCITS, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

2. The record referred to in paragraph (1) shall include:

a) the name or other designation of the UCITS and of the person acting on account of the UCITS;

b) the details necessary to identify the instrument in question;

c) the quantity;

d) the type of the order or transaction;

e) the price;

f) for orders, the date and exact time of the transmission of the order and name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;

g) the name of the person transmitting the order or executing the transaction;

h) where applicable, the reasons for the revocation of an order;

i) for executed transactions, the counterparty and execution venue identification.

For the purposes of point i) of the first sub-paragraph, an "execution venue" shall mean a regulated market as referred to under Article 1, paragraph (11) of the Law of 13 July 2007 on markets in financial instruments, a multilateral trading facility as referred to in Article 1, paragraph (18) of that law, a systematic internaliser as referred to in Article 1, paragraph (8) of that law, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

Article 16
Recording of subscription and redemption orders

1. Management companies shall take all reasonable steps to ensure that the received UCITS subscription and redemption orders are centralised and recorded immediately after receipt of any such order.

2. That record shall include information on the following:

a) the relevant UCITS;

b) the person giving or transmitting the order;

c) the person receiving the order;

d) the date and time of the order;

e) the terms and means of payment;

f) the type of the order;

g) the date of execution of the order;

h) the number of units subscribed or redeemed;

i) the subscription or redemption price for each unit;

j) the total subscription or redemption value of the units;

k) the gross value of the order including charges for subscription or net amount after charges for redemption.

Article 17
Recordkeeping requirements

1. Management companies shall ensure the retention of the records referred to in Articles 15 and 16 of this Regulation for a period of at least 5 years.

However, the CSSF may, in exceptional circumstances, require management companies to retain any or all of those records for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the CSSF to exercise its supervisory functions under the Law of 17 December 2010 concerning undertakings for collective investment.

2. Following the termination of the authorisation of a management company, the CSSF may require the management company to retain the records referred to in paragraph (1) for the outstanding term of the 5-year period.

Where the management company transfers its responsibilities in relation to the UCITS to another management company, the CSSF may require that arrangements are made that such records for the past 5 years are accessible to that company.

3. The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the CSSF, and in such a form and manner that the following conditions are met:

a) the CSSF must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;

b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

c) it must not be possible for the records to be otherwise manipulated or altered.

CHAPTER III
CONFLICTS OF INTEREST

Article 18
Subject matter and scope

This Chapter specifies the provisions which the management companies are required to take in order to comply with Article 109, paragraph (1), point b) and Article 111, point d) of the Law of 17 December 2010 concerning undertakings for collective investment.

Article 19
Criteria for the identification of conflicts of interest

1. For the purposes of identifying the types of conflicts of interest that arise in the course of providing services and activities and whose existence may damage the interests of a UCITS, management companies shall take into account, by way of minimum criteria, the question of whether the management company or a relevant person, or a person directly or indirectly linked to the management company by way of control, is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

   a) the management company or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the UCITS;

   b) the management company or that person has an interest in the outcome of a service or an activity provided to the UCITS or another client or of a transaction carried out on behalf of the UCITS or another client, which is distinct from the UCITS' interest in that outcome;

   c) the management company or that person has a financial or other incentive to favour the interests of another client or group of clients over the interests of the UCITS;

   d) the management company or that person carries on the same activities for the UCITS and for another client or clients which are not UCITS;

   e) the management company or that person receives or will receive from a person other than the UCITS an inducement in relation to collective portfolio management activities provided to the UCITS, in the form of monies, goods or services, other than the standard commission or fee for that service.

2. Management companies, when identifying the types of conflicts of interest, shall take into account:

   a) the interests of the management company, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the management company towards the UCITS;

   b) the interests of two or more managed UCITS.

Article 20
Conflicts of interest policy

1. Management companies shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the management company and the nature, scale and complexity of its business.

   Where the management company is a member of a group, the policy shall also take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph (1) shall include the following:

a) the identification, with reference to the collective portfolio management activities carried out by or on behalf of the management company, of the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients;

b) procedures to be followed and measures to be adopted in order to manage such conflicts.

Article 21
Independence in conflicts management

1. The procedures and measures provided for in Article 20, paragraph (2), point b) of this Regulation shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.

2. The procedures to be followed and measures to be adopted in accordance with Article 20, paragraph (2), point b) of this Regulation shall include the following where necessary and appropriate for the management company to ensure the requisite degree of independence:

a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the management company;

c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, management companies shall adopt such alternative or additional measures and procedures as will be necessary and appropriate for those purposes.

Article 22
Management of activities giving rise to detrimental conflict of interest

1. Management companies shall keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the management company in which a conflict of interest entailing a material risk of damage to the interests of one or more UCITS or other clients has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

2. Where the organisational or administrative arrangements made by the management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unitholders will be prevented, the senior management or other competent internal body of the management company is promptly informed in order for them to take any necessary decision to ensure that in any case the management company acts in the best interests of the UCITS and of its unitholders.

3. The management company shall report situations referred to in paragraph (2) to investors by any appropriate durable medium and give reasons for its decision.

Article 23
Strategies for the exercise of voting rights

1. Management companies shall develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of the UCITS concerned.

2. The strategy referred to in paragraph (1) shall determine measures and procedures for:

   a) monitoring relevant corporate events;

   b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant UCITS;

   c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

3. A summary description of the strategies referred to in paragraph (1) shall be made available to investors.

   Details of the actions taken on the basis of those strategies shall be made available to the unitholders free of charge and on their request.

CHAPTER IV
RULES OF CONDUCT

Article 24
Subject matter and scope

This Chapter specifies the provisions which the management companies are required to take, in order to meet the requirements of Article 111, points a) and b) of the Law of 17 December 2010 concerning undertakings for collective investment.

SECTION 1
General principles

Article 25
Duty to act in the best interests of UCITS and their unitholders

1. Management companies shall ensure that unitholders of managed UCITS are treated fairly.

   Management companies shall refrain from placing the interests of any group of unitholders above the interests of any other group of unitholders.

2. Management companies shall apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market.

3. Without prejudice to any other provisions of Luxembourg law, management companies shall ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS they manage, in order to comply with the duty to act in the best interests of the unitholders. Management companies must be able to demonstrate that the UCITS' portfolios have been accurately valued.

4. Management companies shall act in such a way as to prevent undue costs being charged to the UCITS and its unitholders.

Article 26
Due diligence requirements

1. Management companies shall ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market.

2. Management companies shall ensure they have adequate knowledge and understanding of the assets in which the UCITS are invested.

3. Management companies shall establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.

4. Management companies when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, shall formulate forecasts and perform analyses concerning the investment's contribution to the UCITS' portfolio composition, liquidity and risk and reward profile before carrying out the investment. These analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

   Management companies shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities. Before entering into such arrangements, management companies shall take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The management company shall establish methods for the on-going assessment of the standard of performance of the third party.

SECTION 2
Handling of subscription and redemption orders

Article 27
Reporting obligations in respect of execution of subscription and redemption orders

1. Where management companies have carried out a subscription or redemption order from a unitholder, they must notify the unitholder, by means of a durable medium, confirming execution of the order as soon as possible, and no later than the first business day following execution or, where the confirmation is received by the management company from a third party, no later than the first business day following receipt of the confirmation from the third party.

   However, the first sub-paragraph shall not apply where the notice would contain the same information as a confirmation that is to be promptly dispatched to the unitholder by another person.

2. The notice referred to in paragraph (1) shall, where applicable, include the following information:

   a) the management company identification;

   b) the name or other designation of the unitholder;

   c) the date and time of receipt of the order and method of payment;

   d) the date of execution;

   e) the UCITS identification;

   f) the nature of the order (subscription or redemption);

   g) the number of units involved;

   h) the unit value at which the units were subscribed or redeemed;

   i) the reference value date;

   j) the gross value of the order including charges for subscription or net amount after deduction of charges for redemptions;

   k) a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

3. Where orders for a unitholder are executed periodically, management companies shall either take the action specified in paragraph (1) or provide the unitholder, at least once every 6 months, with the information listed in paragraph (2) in respect of those transactions.

4. Management companies shall supply the unitholder, upon request, with information about the status of his order.

SECTION 3
Best execution

Article 28
Execution of decisions to deal on behalf of the managed UCITS

1. Management companies shall act in the best interests of the UCITS they manage when executing decisions to deal on behalf of the managed UCITS in the context of the management of their portfolios.

2. For the purposes of paragraph 1, management companies shall take all reasonable steps to obtain the best possible result for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the following criteria:

   a) the objectives, investment policy and risks specific to the UCITS, as indicated in the prospectus or, as the case may be, in the management regulations or instruments of incorporation of the UCITS;

   b) the characteristics of the order;

   c) the characteristics of the financial instruments that are the subject of that order;

   d) the characteristics of the execution venues to which that order can be directed.

3. Management companies shall establish and implement effective arrangements for complying with the obligation referred to in paragraph (2). In particular, management companies shall establish and implement a policy to allow them to obtain, for UCITS orders, the best possible result in accordance with paragraph (2).

   Management companies shall obtain the prior consent of the investment company on the execution policy. Management companies shall make available appropriate information to unitholders on the policy established in accordance with this Article and on any material changes to their policy.

4. Management companies shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders in order to identify and, where appropriate, correct any deficiencies.

   In addition, management companies shall review the execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

5. Management companies shall be able to demonstrate that they have executed orders on behalf of the UCITS in accordance with the management company's execution policy.

Article 29

Placing orders to deal on behalf of UCITS with other entities for execution

1. Management companies shall act in the best interests of the UCITS they manage when placing orders to deal on behalf of the managed UCITS with other entities for execution, in the context of the management of their portfolios.

2. Management companies shall take all reasonable steps to obtain the best possible result for the UCITS taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to Article 28, paragraph (2) of this Regulation.

   For those purposes, management companies shall establish and implement a policy to enable them to comply with the obligation referred to in the first sub-paragraph. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. Management companies shall only enter into arrangements for execution where such arrangements are consistent with obligations laid down in this Article. Management companies shall make available to unitholders appropriate information on the policy established in accordance with this paragraph and on any material changes to this policy.

3. Management companies shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph (2) and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, management companies shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

4. Management companies shall be able to demonstrate that they have placed orders on behalf of the UCITS in conformity with the policy established in accordance with paragraph (2).

SECTION 4
Handling of orders

Article 30
General principles

1. Management companies shall establish and implement procedures and arrangements which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the UCITS.

The procedures and arrangements implemented by management companies shall satisfy the following conditions:

a) they shall ensure that orders executed on behalf of UCITS are promptly and accurately recorded and allocated;

b) they shall execute otherwise comparable UCITS orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the UCITS require otherwise.

Financial instruments or sums of money, received in settlement of the executed orders shall be promptly and correctly delivered to the account of the appropriate UCITS.

2. Management companies shall not misuse information relating to pending UCITS orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Article 31
Aggregation and allocation of trading orders

1. Management companies are not permitted to carry out a UCITS order in aggregate with an order of another UCITS or another client or with an order on their own account, unless the following conditions are met:

a) it must be unlikely that the aggregation of orders will work overall to the disadvantage of any UCITS or clients whose order is to be aggregated;

b) an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.

2. Where a management company aggregates a UCITS order with one or more orders of other UCITS or clients and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

3. Management companies which have aggregated transactions for own account with one or more UCITS or other clients' orders shall not allocate the related trades in a way that is detrimental to the UCITS or another client.

4. Where a management company aggregates an order of a UCITS or another client with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the UCITS or other client in priority over those for own account.

However, if the management company is able to demonstrate to the UCITS or its other client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for own account proportionally, in accordance with the policy as referred to in paragraph (1), point (b).

SECTION 5
Inducements

Article 32
Safeguarding the best interests of UCITS

1. Management companies will not be regarded as acting honestly, fairly and professionally in accordance with the best interests of the UCITS if, in relation to the activities of investment management and administration of the UCITS, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

a) a fee, commission or non-monetary benefit paid or provided to or by the UCITS or a person on behalf of the UCITS;

b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:

i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount must be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;

ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the management company's duty to act in the best interests of the UCITS;

c) proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the management company's duties to act honestly, fairly and professionally in accordance with the best interests of the UCITS.

2. The management company, for the purposes of paragraph (1), point b) i), may disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that the management company undertakes to disclose further details at the request of the unitholder and provided that it honours that undertaking.

CHAPTER V
PARTICULARS OF THE STANDARD AGREEMENT BETWEEN A DEPOSITARY AND A MANAGEMENT COMPANY

Article 33
Subject matter and scope

This Chapter specifies the content of the agreement which the management company and the depositary shall enter into according to Article 18, paragraph (3) and Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment.

Article 34

Elements related to the procedures to be followed by the parties to the agreement

The depositary and the management company, referred to in this Chapter as the "parties to the agreement", shall include in the written agreement referred to in either Article 18, paragraph (3) or Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment at least the following particulars related to the services provided by and procedures to be followed by the parties to the agreement:

a) a description of the procedures, including those related to the safekeeping, to be adopted for each type of asset of the UCITS entrusted to the depositary;

b) a description of the procedures to be followed where the management company envisages a modification of the management regulations or instruments of incorporation or prospectus of the UCITS, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;

c) a description of the means and procedures by which the depositary will transmit to the management company all relevant information that the management company needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the management company and the UCITS to have timely and accurate access to information relating to the accounts of the UCITS;

d) a description of the means and procedures by which the depositary will have access to all the relevant information it needs to perform its duties;

e) a description of the procedures by which the depositary has the ability to enquire into the conduct of the management company and to assess the quality of information transmitted, including by way of on-site visits;

f) a description of the procedures by which the management company can review the performance of the depositary in respect of the depositary's contractual obligations.

Article 35

Elements related to the exchange of information and to obligations on confidentiality and money-laundering

1. The parties to the agreement referred to in either Article 18, paragraph (3) or Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment shall include at least the following elements related to the exchange of information and obligations on confidentiality and money laundering in that agreement:

    a) a list of all the information that needs to be exchanged between the UCITS, its management company and the depositary related to the subscription, redemption, issue, cancellation and repurchase of units of the UCITS;

    b) the confidentiality obligations applicable to the parties to the agreement;

    c) information on the tasks and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.

2. The obligations referred to in paragraph 1 b) shall be drawn up so as not to impair the ability of either the CSSF or the competent authorities of a management company's home Member State in gaining access to relevant documents and information.

Article 36

Elements related to the appointment of third parties

Where the depositary or the management company envisage appointing third parties to carry out their respective duties, both parties to the agreement referred to either in Article 18, paragraph (3) or Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment shall include at least the following particulars in that agreement:

a) an undertaking by both parties to the agreement to provide details, on a regular basis, of any third parties appointed by the depositary or the management company to carry out their respective duties;

b) an undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party;

c) a statement that a depositary's liability as referred to in Article 19 or Article 35 of the Law of 17 December 2010 concerning undertakings for collective investment shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safekeeping.

Article 37

Elements related to potential amendments and the termination of the agreement

The parties to the agreement referred to in either Article 18, paragraph (3) or Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment shall include in that agreement at least the following particulars related to amendments and the termination of the agreement:

a) the period of validity of the agreement;

b) the conditions under which the agreement may be amended or terminated;

c) the conditions which are necessary to facilitate transition to another depositary and, in case of such transition the procedure by which the depositary shall send all relevant information to the other depositary.

Article 38

Applicable law

The parties to the agreement referred to either in Article 18, paragraph (3) or Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment shall specify that Luxembourg law applies to that agreement.

Article 39

Electronic transmission of information

In cases where the parties to the agreement referred to in either Article 18, paragraph (3) or Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment agree to the use of electronic transmission for part or all of information that flows between them, such agreement shall contain provisions ensuring that a record is kept of such information.

Article 40

Scope of the agreement

The agreement referred to in either Article 18, paragraph (3) or Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment may cover more than one UCITS managed by the management company. In such cases, the agreement shall list the UCITS covered.

Article 41
Service level agreement

Parties to the agreement may either include details of means and procedures referred to in Article 34, points c) and d) of this Regulation in the agreement referred to in either Article 18, paragraph (3) or Article 33, paragraph (4) of the Law of 17 December 2010 concerning undertakings for collective investment or in a separate written agreement.

CHAPTER VI
RISK MANAGEMENT

Article 42
Subject matter and scope

This Chapter specifies the risk management policy and risk measurement to be put in place by a management company incorporated under Luxembourg law in order to comply with Article 42, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment.

SECTION 1
Risk management policy and risk measurement

Article 43
Risk management policy

1. Management companies shall establish, implement and maintain an adequate and documented risk management policy which identifies the risks the UCITS they manage are or might be exposed to.

   The risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.

   Management companies shall address at least the following elements in the risk management policy:

   a) the techniques, tools and arrangements that enable them to comply with the obligations set out in Articles 45 and 46 of this Regulation;

   b) the allocation of responsibilities within the management company pertaining to risk management.

2. Management companies shall ensure that the risk management policy referred to in paragraph (1) states the terms, contents and frequency of reporting of the risk management function referred to in Article 13 of this Regulation to the board of directors and to senior management and, where appropriate, to the supervisory function.

3. For the purposes of paragraphs (1) and (2), management companies shall take into account the nature, scale and complexity of their business and of the UCITS they manage.

Article 44
Assessment, monitoring and review of risk management policy

1. Management companies shall assess, monitor and periodically review:

   a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in Articles 45 and 46 of this Regulation;

b) the level of compliance by the management company with the risk management policy and with the arrangements, processes and techniques referred to in Articles 45 and 46 of this Regulation;

c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

2. Management companies shall notify the CSSF of any material changes to the risk management process.

SECTION 2
Risk management processes, Counterparty risk exposure and issuer concentration

Article 45
Measurement and management of risk

1. Management companies shall adopt adequate and effective arrangements, processes and techniques in order to:

a) measure and manage at any time the risks which the UCITS they manage are or might be exposed to;

b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with Articles 46 and 48 of this Regulation.

These arrangements, processes and techniques shall be proportionate to the nature, scale and complexity of the business of the management companies and of the UCITS they manage and be consistent with the UCITS' risk profile.

2. For the purposes of paragraph (1), management companies shall take the following actions for each UCITS they manage:

a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of taken positions and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;

b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;

c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS;

d) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each UCITS taking into account all risks which may be material to the UCITS as referred to in Article 43 of this Regulation and ensuring consistency with the UCITS risk profile;

e) ensure that the current level of risk complies with the risk limit system as set out in point (d) for each UCITS;

f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to the risk limit system of the UCITS, result in timely remedial actions in the best interests of unitholders.

3. Management companies shall employ an appropriate liquidity risk management process in order to ensure that each UCITS they manage is able to comply at any time with Article 11, paragraph (2) or Article 28, paragraph (1), point b) of the Law of 17 December 2010 concerning undertakings for collective investment.

   Where appropriate, management companies shall conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances.

4. Management companies shall ensure that for each UCITS they manage the liquidity profile of the investments of the UCITS is appropriate to the redemption policy laid down in the management regulations or the instruments of incorporation or the prospectus.

Article 46
Calculation of global exposure

1. Management companies shall calculate the global exposure of a managed UCITS as referred to in Article 42, paragraph (3) of the Law of 17 December 2010 concerning undertakings for collective investment as either of the following:

   a) the incremental exposure and leverage generated by the managed UCITS through the use of financial derivative instruments including embedded derivatives pursuant to Article 42, paragraph (3), fourth sub-paragraph of the Law of 17 December 2010 concerning undertakings for collective investment, which may not exceed the total of the UCITS net asset value;

   b) the market risk of the UCITS portfolio.

2. Management companies shall calculate the UCITS' global exposure at least on a daily basis.

3. Management companies shall calculate the global exposure by using the commitment approach, the-value-at-risk approach or other advanced risk measurement methodologies as may be appropriate. For the purposes of this provision, "value-at-risk" shall mean a measure of the maximum expected loss at a given confidence level over a specific time period.

   Management companies shall ensure that the method selected to measure global exposure is appropriate, taking into account the investment strategy pursued by the UCITS and the types and complexities of the financial derivative instruments used, and the proportion of the UCITS' portfolio which comprises financial derivative instruments.

4. Where a UCITS in accordance with Article 42, paragraph (2) of the Law of 17 December 2010 concerning undertakings for collective investment employs techniques and instruments including repurchase agreements or securities lending transactions in order to generate additional leverage or exposure to market risk, the management company shall take these transactions into consideration when calculating global exposure.

Article 47
Commitment approach

1. Where the commitment approach is used for the calculation of global exposure, management companies shall apply this approach to all financial derivative instrument positions including embedded derivatives as referred to in the fourth sub-paragraph of Article 42, paragraph (3) of the Law of 17 December 2010 concerning undertakings for collective investment, whether used as part of the UCITS general investment policy, for the purposes of risk reduction or for the purposes of efficient portfolio management as referred to in Article 42, paragraph (2) of that Law.

2. Where the commitment approach is used for the calculation of global exposure, management companies shall convert each financial derivative instrument position into the market value of an equivalent position in the underlying asset of that derivative (standard commitment approach).

Management companies may apply other calculation methods which are equivalent to the standard commitment approach.

3. Management companies may take account of netting and hedging arrangements when calculating global exposure, where these arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.

4. Where the use of financial derivative instruments does not generate incremental exposure for the UCITS, the underlying exposure need not be included in the commitment calculation.

5. Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS in accordance with Article 50 of the Law of 17 December 2010 concerning undertakings for collective investment need not be included in the global exposure calculation.

Article 48
Counterparty risk and issuer concentration

1. Management companies shall ensure that counterparty risk arising from an over-the-counter (OTC) financial derivative instrument is subject to the limits set out in Article 43 of the Law of 17 December 2010 concerning undertakings for collective investment.

2. When calculating the UCITS' exposure to a counterparty in accordance with the limits as referred to in Article 43, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment, management companies shall use the positive mark-to-market value of the OTC derivative contract with that counterparty.

   Management companies may net the derivative positions of a UCITS with the same counterparty, provided that they are able to legally enforce netting agreements with the counterparty on behalf of the UCITS. Netting shall only be permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the UCITS may have with that same counterparty.

3. Management companies may reduce the UCITS' exposure to a counterparty of an OTC derivative transaction through the receipt of collateral. Collateral received shall be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.

4. Management companies shall take collateral into account in calculating exposure to counterparty risk as referred to in Article 43, paragraph (1) of the Law of 17 December 2010 concerning undertakings for collective investment when the management company passes collateral to OTC counterparty on behalf of the UCITS. Collateral passed may be taken into account on a net basis only if the management company is able to legally enforce netting arrangements with this counterparty on behalf of the UCITS.

5. Management companies shall calculate issuer concentration limits as referred to in Article 43 of the Law of 17 December 2010 concerning undertakings for collective investment on the basis of the underlying exposure created through the use of financial derivative instruments pursuant to the commitment approach.

6. With respect to the exposure arising from OTC derivatives transactions as referred to in Article 43, paragraph (2) of the Law of 17 December 2010 concerning undertakings for collective investment, management companies shall include in the calculation any exposure to OTC derivative counterparty risk.

SECTION 3
Procedures for the valuation of the OTC derivatives

Article 49
Procedures for the assessment of the value of OTC derivatives

1. Management companies shall verify that UCITS' exposures to OTC derivatives are assigned fair values that do not rely only on market quotations by the counterparties of the OTC transactions and which fulfil the criteria set out in Article 8, paragraph (4) of the Grand-Ducal Regulation of 8 February 2008 relating to certain definitions of the amended Law of 20 December 2002 on undertakings for collective investment and implementing Directive 2007/16/EC.

2. For the purposes of paragraph (1), management companies shall establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of UCITS' exposures to OTC derivatives.

   Management companies shall ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment.

   The valuation arrangements and procedures shall be adequate and proportionate to the nature and complexity of the OTC derivatives concerned.

   Management companies shall comply with the requirements set out in Article 6, paragraph (2) and in the second sub-paragraph of Article 26, paragraph (4) of this Regulation when arrangements and procedures concerning the valuation of OTC derivatives involve the performance of certain activities by third parties.

3. For the purposes of paragraphs (1) and (2), the risk management function shall be appointed with specific duties and responsibilities.

4. The valuation arrangements and procedures referred to in paragraph (2) shall be adequately documented.

SECTION 4
Transmission of information on derivative instruments

Article 50
Reports on derivative instruments

Management companies shall deliver to the CSSF, at least on an annual basis, reports containing information which reflects a true and fair view of the types of derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods which are chosen to estimate the risks associated with the derivative transactions.

Article 51
Publication

This Regulation will be published in the Mémorial and on the website of the CSSF. This Regulation will become effective for UCITS governed by the Law of 17 December 2010 concerning undertakings for collective investment as from the day of its coming into force.

Luxembourg, 20 December 2010

8.

CSSF CIRCULAR 16/644

RELATING TO THE PROVISIONS APPLICABLE TO CREDIT INSTITUTIONS ACTING AS DEPOSITARIES OF UCITS SUBJECT TO PART I OF THE LAW OF 17 DECEMBER 2010 ON UNDERTAKINGS FOR COLLECTIVE INVESTMENT AND TO ALL UCITS, AS THE CASE MAY BE, REPRESENTED BY THEIR MANAGEMENT COMPANY

CSSF Circular 16/644 relating to the provisions applicable to credit institutions acting as depositaries of UCITS subject to Part I of the Law of 17 December 2010 on undertakings for collective investment and to all UCITS, as the case may be, represented by their management company

Luxembourg, 11 October 2016

To all credit institutions acting as depositaries of UCITS subject to Part I of the Law of 17 December 2010 relating to undertakings for collective investment and to all UCITS, as the case may be, represented by their management company

CSSF CIRCULAR 16/644

Re: Provisions applicable to credit institutions acting as depositaries of UCITS subject to Part I of the Law of 17 December 2010 on undertakings for collective investment and to all UCITS, as the case may be, represented by their management company

Ladies and Gentlemen,

This Circular follows the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 (the "UCITS V Directive") into Luxembourg law (the "2016 Law") by amending the Law of 17 December 2010 on undertakings for collective investment (the "2010 Law") and the Commission Delegated Regulation (EU) 2016/438 with regard to obligations of depositaries (the "Delegated Regulation"). These texts provide for a set of requirements, some new, concerning the duties of depositaries regarding the safekeeping of assets, oversight obligations and obligations in relation to the monitoring of financial flows, and they have modified the liability regime of depositaries with regard to UCITS and unitholders.

This Circular provides clarifications concerning the organisational obligations applicable to depositaries of undertakings for collective investment in transferable securities subject to Part I of the 2010 Law (each a "UCITS") by clarifying certain aspects of the 2016 Law and/or the Delegated Regulation in a Luxembourg context and by also providing clarifications on some aspects that are not specifically covered by the 2016 Law or the Delegated Regulation. In so doing, this Circular repeals and replaces CSSF Circular 14/587 as amended by CSSF Circular 15/608.

This Circular is addressed to Luxembourg credit institutions governed by the Law of 5 April 1993 on the financial sector (the "1993 Law") and to the Luxembourg branches of credit institutions established in a Member State of the European Union which act, or intend to apply for authorisation to act, as depositary bank ("depositaries" or "depositary") of UCITS. It is also addressed to these UCITS themselves, as the case may be, represented by their management company, with regard to their interaction with their depositary.

In this Circular, any reference to a UCITS is, as the case may be and according to the circumstances, to be understood as a reference to a UCITS and/or its management company.

Given that the duties and responsibilities of UCITS depositaries may evolve or be subject to clarifications, particularly by guidelines or questions/answers of the European Securities and Markets Authority (ESMA), the organisational arrangements described below may be completed or modified and are, as the case may be, to be read in conjunction with the guidelines and recommendations for the attention of the competent authorities and/or players in the financial markets.

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ENTRY INTO FORCE AND MISCELLANEOUS PROVISIONS

Definitions:

For the purpose of this Circular the following means:

"1993 Law":	the Law of 5 April 1993 on the financial sector, as amended;
"2004 Law":	the Law of 15 June 2004 on the investment company in risk capital (SICAR), as amended;
"2007 Law":	the Law of 13 February 2007 on specialised investment funds, as amended;
"2010 Law":	the Law of 17 December 2010 on undertakings for collective investment, as amended;
"2013 Law":	the Law of 12 July 2013 on alternative investment fund managers, as amended;
"2016 Law":	the Law of 10 May 2016 transposing the UCITS V Directive and amending the 2010 Law and the 2013 Law;
"assets":	the financial instruments that may be held in custody and the other assets in which a UCITS is invested at any given moment and/or which are owned by a UCITS at any given moment;
"cash":	money in cash and bank deposits of a UCITS;
"CSSF Circular 12/546":	CSSF Circular 12/546 (as amended by Circular CSSF 15/633) concerning authorisation and organisation of Luxembourg management companies subject to Chapter 15 of the 2010 Law on undertakings for collective investment as well as investment companies which have not designated a management company within the meaning of Article 27 of the 2010 Law on undertakings for collective investment;
"CSSF Circular 12/552":	CSSF Circular 12/552 (as amended by CSSF Circulars 13/563, 14/597 and 16/642) concerning central administration, internal governance and risk management;
"CSSF Circular 14/587":	CSSF Circular 14/587 (as amended by Circular 15/608 concerning the provisions applicable to credit institutions acting as depositaries of UCITS subject to Part I of the 2010 Law on undertakings for collective investment and to all UCITS, as the case may be, represented by their management company;
"CSSF Circular 14/592":	CSSF Circular 14/592 concerning the guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues;
"collateral agent":	an agent appointed by the UCITS, by the counterparty of the UCITS or jointly by both, to be in charge solely of custody (to the exclusion of management and administration) of the guarantees and securities that the UCITS is required to give or receive within the context of the performance of its investment policy;
"collateral manager":	an agent appointed by the UCITS, by the counterparty of the UCITS or jointly by both, to be in charge of the management and administration of the guarantees and securities the UCITS is required to give or receive within the context of the performance of its investment policy. A collateral manager may also in certain cases act as a collateral agent;

"contract appointing the depositary":	the written contract entered into between a UCITS or its management company (for a UCITS established in contractual form) and an institution which has been approved to act as depositary of a UCITS, through which this institution has been entrusted with the duty of a depositary within the meaning of the provisions of Articles 17, 33 or 39 of the 2010 Law. The term contract appointing the depositary shall be understood to include the depositary contract itself as well as all of the annexes and amendments to the contract, insofar as such annexes or amendments create contractual obligations between the parties. For UCITS established in corporate form having appointed a management company, the contract may be tripartite between the UCITS, the management company and the depositary;
"delegate":	a third party appointed by the depositary to which the depositary delegates the safekeeping functions of the UCITS' assets in accordance with Articles 18*bis,* 34*bis* and 39 of the 2010 Law and Articles 15, 16 and 17 of the Delegated Regulation;
"Delegated Regulation":	Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries;
"delegation":	delegation of functions in relation to the safekeeping of UCITS' assets by the depositary to a third party within the meaning of Articles 18*bis,* 34*bis* and 39 of the 2010 Law and Articles 15, 16 and 17 of the Delegated Regulation;
"escalation procedure":	procedure to be established as an integral part of the contract appointing the depositary in which the different successive steps to be followed upon the intervention of the depositary or of the UCITS are specified. This procedure must clearly identify the persons to be contacted at the level of the UCITS by the depositary when the latter deems an intervention to be necessary and at the level of the depositary upon the intervention of the UCITS;
"financial instruments that may be held in custody":	the financial instruments whose custody can be assured within the meaning of Articles 18(4)a), 34(3)a) and 39 of the 2010 Law;
"other assets":	the assets, including cash, other than financial instruments that may be held in custody within the meaning of Articles 18(4) b), 34 (3) b) and 39 of the 2010 Law;
"outsourcing":	the complete or partial transfer of operational functions, activities or provision of (support) services of the depositary to an external service provider[1], whether or not it is part of the group to which the depositary belongs, other than a delegation;
"outsourcing of a material activity":	the outsourcing of any activity which, when it is not carried out within the rules, diminishes the capacity of the depositary to comply with the regulatory requirements or to carry out its operations, as well as any activity which is necessary for the sound and prudent risk management;

[1] Referred to as "subcontractor" in this translation.

"person responsible for the UCITS "depositary bank" business line":	the person(s), whether directors(s) or not, of the institution acting as depositary, who is/are in charge at a senior hierarchical level of responsibility of the operational aspects of the institution's UCITS depositary business in Luxembourg;
"safekeeping of assets of a UCITS in liquidation or without a depositary":	the obligation of the last credit institution that acts as a depositary of a UCITS prior to its removal or withdrawal from the official list referred to in Article 130(2) of the 2010 Law, to keep open all of the securities and cash accounts for the different assets of such UCITS which are held in custody by such institution at the moment of the removal or withdrawal, and until the appointment of a successor or until the closure of the liquidation of such UCITS, in accordance with the provisions of points 91 and 92 of this Circular;
"UCITS":	an/the undertaking(s) for collective investment in transferable securities established in the form of a SICAV (self-managed or having appointed a management company) or a common fund, governed by Part I of the 2010 Law;
"UCITS V Directive":	Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions;
"unitholders":	the unitholders of UCITS established in contractual form (common funds, managed by a management company) and the shareholders of UCITS established in corporate form (investment companies).

Part I. General remarks

1. The organisational aspects applicable in the context of the UCITS V depositary regime introduced by the 2016 Law are above all clarified in the Delegated Regulation as far as the obligations of depositaries are concerned. The Delegated Regulation provides clarification in particular on the content of the written contract between a UCITS (and/or its management company) and its depositary, the escalation procedure of the depositary with regard to the UCITS, the tasks to be carried out by the depositary with regard to its monitoring duties established by the 2016 Law and the information to be received by the depositary concerning its obligations with regard to the monitoring of financial flows. The Delegated Regulation also provides clarifications regarding the depositary's new asset safekeeping obligations with regard to the various types of assets in which UCITS can invest, with particular clarification of the obligations of segregation and due diligence to be put in place at depositary level and at the level of the entities to which a depositary envisages delegating or has delegated its asset safekeeping obligations. Insofar as this Circular provides additional clarifications on topics also covered by the Delegated Regulation, reference is made to the relevant article(s) in the Delegated Regulation.

Part II. Appointment of a credit institution as depositary of a UCITS: eligibility and approval criteria

Chapter 1. Eligibility criteria in order to act as depositary of a UCITS

2. In accordance with the provisions applicable to UCITS under the 2010 Law, access to the function of depositary of a UCITS is reserved to credit institutions within the meaning of the 1993 Law which have their registered office in Luxembourg or to the Luxembourg branches of credit institutions which have their registered office in another Member State of the European Union[2].

3. These institutions can only accept to be appointed as the depositary of a UCITS if they possess, in addition to their authorisation as credit institution, a specific authorisation to act as depositary of a UCITS established in Luxembourg, this authorisation is granted by the CSSF in accordance with the provisions set out in Chapter 2. hereafter.

Chapter 2. Authorisation procedure in order to act as depositary of a UCITS

4. An institution which is eligible to act as a depositary of a UCITS in accordance with the applicable legal provisions (see Chapter 1. above) must submit a file requesting authorisation as depositary of a UCITS within the framework of the provisions of Article 129(2) of the 2010 Law.

5. Those institutions which have already been authorised as depositary of UCITS as of the date of the entry into force of the Circular are not required to apply for a new authorisation on the basis of the provisions below, but shall comply with the obligations described hereafter.

Sub-Chapter 2.1. Condition of professional experience and reputation of the person(s) responsible for the UCITS "depositary bank" business line of the credit institution

6. In order for an institution to obtain its authorisation as the depositary of a UCITS, its person(s) responsible for the UCITS "depositary bank" business line shall have the requisite reputation and experience, particularly having regard to the type of UCITS for which the credit institution intends to act as depositary. To this end, the identity of the person(s) responsible for the

[2] As clarified in the 2010 Law, the States that are contracting parties to the Agreement creating the European Economic Area other than the Member States of the European Union, within the limits set forth by this Agreement and related acts, are considered as equivalent to Member States of the European Union.

UCITS "depositary bank" business line, as well as that of every person succeeding them in their function, must be notified immediately to the CSSF.

As regards the condition of the requisite professional experience, the person(s) responsible for the UCITS "depositary bank" business line must have the proper professional experience by having already exercised similar activities in the field of a depositary of UCITS, or the depositary of UCIs other than UCITS with an investment policy with similar characteristics to those of UCITS for which the person(s) responsible intend(s) to act as person(s) responsible for the "depositary bank" business line, with a high level of responsibility and autonomy.

Sub-Chapter 2.2. Description of human and technical resources

7. The CSSF must receive a precise and detailed description of the organisation of the human and technical resources that the credit institution has at its disposal to perform all of the tasks related to the function of the depositary of a UCITS. This description must take into account the type of UCITS for which the credit institution intends to act as depositary, taking into particular account the investment policy that the UCITS concerned intend to pursue.

8. The information to be provided to the CSSF in an application for authorisation as depositary of a UCITS is set out in Annex 1 of this Circular. This list of information to be provided to the CSSF is not exhaustive. It may be supplemented by any other item deemed to be appropriate, given the characteristics of the file submitted to the CSSF.

9. The information to be provided has to permit the CSSF to assess whether there is sufficient substance in Luxembourg in view of the applicable legal and regulatory requirements. The analysis of the information will focus particularly on the operational model of the institution (or the model it plans to put in place) with a view to analysing the operational risks inherent in the model. Particular attention will be had, as the case may be, to aspects of the delegation of asset safekeeping functions, to aspects of outsourcing and to the monitoring procedures to be put in place by the institution in these areas, in the event that such delegation or outsourcing is envisaged from the time of the initial application for authorisation as a UCITS depositary. Regarding the provisions applicable to delegation and outsourcing, reference is made to points 11 to 16 of sub-chapter 2.3. below.

10. Any authorisation as depositary of a UCITS remains valid for so long as the elements on the basis of which it was granted remain unchanged. Any credit institution which acts as depositary of a UCITS is required to apply for approval from the CSSF for any fundamental change of the elements which formed the basis of its initial authorisation as depositary of a UCITS (including notably any possible change concerning the delegation and outsourcing aspects of a material activity) or in the case of a significant change to its operational model. The elements which appear under Annex 1 of this Circular must be kept up-to-date and must be provided to the CSSF in accordance with the frequency indicated therein.

Sub-chapter 2.3. Specific provisions applicable to delegation and outsourcing

11. Any credit institution acting as UCITS depositary must comply with the provisions of this sub-chapter in the event of delegation and outsourcing.

12. The depositaries of UCITS shall ensure that the risk management policies and procedures and, as the case may be, the risk management function, correctly identify the risks associated with every delegation and outsourcing of a material activity. With regard to the risks which have been identified, the depositaries shall also ensure that efficient risk management and control systems, processes and mechanisms for these risks are in place.

13. Any delegation and any outsourcing by the depositary shall be documented by a contract between the depositary and its delegate or subcontractor according to the principles outlined in sub-chapter 2.2. of Chapter 2. of Part III. of this Circular. This contract shall confer a right of direct access of the CSSF to the premises of any entity responsible for carrying out a material outsourced activity.

14. Concerning the delegation of functions relating to the safekeeping of the assets of UCITS, the rules under Articles 18*bis*, 34*bis,* and 39 of the 2010 Law and Articles 15, 16 and 17 of the Delegated Regulation specify the conditions applicable to such a delegation. It should be noted that these delegates must appear on the list of delegates which is to be kept up-to-date and to be sent to the CSSF on an annual basis in accordance with point f) of Annex 1 of this Circular.

15. Any outsourcing by a depositary to external service providers shall be carried out in compliance with the principles outlined in sub-chapter 7.4 of Circular 12/552.

16. Any outsourcing of a material activity requires the prior authorisation of the CSSF. A notification to the CSSF, justifying compliance with the applicable conditions, particularly with regard to the 2010 Law, the Delegated Regulation and the principles outlined in sub-chapter 7.4 of Circular 12/552, is sufficient when the depositary uses a Luxembourg credit institution or a support professional of the financial sector (PFS) according to Articles 29-1, 29-2, 29-3 and 29-4 of the 1993 Law.

Chapter 3. The contract appointing the depositary (Chapter I of the Delegated Regulation)

17. The definitions and details of the written contract (contract appointing the depositary) to be established between the depositary, on the one hand, and the investment and/or management company on the other hand, are specified in Chapter 1 of the Delegated Regulation. Article 2.2 of the Delegated Regulation lists the items that this contract must at least include.

    A single and unique depositary shall be appointed for each UCITS under the terms of Articles 17(1), 33(1) and 39 of the 2010 Law. For UCITS with multiple sub-funds, one and the same depositary shall be appointed for all of the sub-funds of the UCITS with multiple sub-funds.

    With the entry into force of the contract appointing the depositary, the depositary is vested with the duties of a depositary of the UCITS with whom the contract has been concluded.

18. Every contract appointing the depositary is subject to the general principle of freedom of contract, subject to compliance with the applicable legal, regulatory and administrative provisions. Pursuant to Article 2.5 of the Delegated Regulation, the law applicable to the contract must be specified. In all cases the applicable law shall be Luxembourg law. It is also recommended to provide for between the contracting parties that any litigation shall be subject to the exclusive jurisdiction of the Luxembourg courts.

19. The depositary may, on the condition of specific contractual provisions, benefit from a general or specific pledge on the assets of the UCITS on deposit. The provisions concerning this general or special pledge must, as the case may be, specify the exceptions to this general or special pledge, either in the form of specific provisions in the contract appointing the depositary, or in the form of an amendment agreement to the contract appointing the depositary.

20. Any provisions concerning the pledge of the depositary shall specify the extent to which the depositary benefits from a right to use the assets pledged in its favour.

21. The parties may agree to a clause which permits the depositary to invoke a right of set-off between the various credit/debit balances of the accounts opened in its books on behalf of a UCITS or, as the case may be, on behalf of each of the different sub-funds of a UCITS with multiple sub-funds.

Part III. Clarifications relating to governance and organisation

Chapter 1. Conflicts of interest

22. Pursuant to Articles 20, 37 and 39 of the 2010 Law, the management and/or the investment company and the depositary of a UCITS shall act honestly, fairly, professionally and independently and act solely in the interests of the UCITS and its unitholders. These Articles in

the 2010 Law clarify more specifically the requirement of independence between the depositary and the management and/or investment company. In this context it should be noted that the Delegated Regulation structures this requirement of independence with regard to an operational independence, as opposed to a legal or structural independence.

23. The obligation for the depositary to act honestly, fairly, professionally, independently and solely in the interest of the UCITS and its unitholders requires that the activity of depositary of a UCITS must be managed and organised in such a way as to minimise any potential conflicts of interest.

24. In order to avoid any risk of conflicts of interest, no delegation or sub-delegation of the principal function of investment management can be accepted by the depositary.

25. The prohibition in relation to the delegation or sub-delegation of the principal function of investment management also applies to any delegate and in general to any entity below a delegate in the custody chain of an asset. The prohibition according to which no mandate relating to the principal function of investment management can be given to a depositary or to a delegate and in general to any entity below a delegate in the custody chain of an asset shall not prohibit the delegation of the principal function of investment management to an entity linked to the depositary by common management or control.

26. Neither the depositary nor one of the delegates to whom all or part of the assets of a given UCITS has been entrusted, can accept the delegation of the risk management function from the UCITS or from its management company. The depositary or a delegate may however be entrusted with the performance of certain tasks linked to the risk management function.

27. Subject to compliance with the rules set out in Articles 20(2), 37(2) and 39 of the 2010 Law, the credit institution acting as depositary of a UCITS may in particular act in the following capacities, on condition that, as the case may be, it benefits from the necessary authorisations:

    a) agent for reception and transmission of orders relating to one or more financial instruments;

    b) counterparty to the transactions carried out by UCITS in accordance with the provisions of Chapter 5 of the 2010 Law;

    c) administrative agent and/or registrar agent;

    d) collateral agent;

    e) collateral manager;

    f) tax or reporting service provider.

    With regard to points c) to f) above, the depositary is required (i) to establish, implement and maintain operational an effective conflicts of interest policy, (ii) to establish a functional and hierarchical separation between the performance of its depositary functions of a UCITS and the performance of other tasks, (iii) to proceed with the identification as well as the management and adequate disclosure of potential conflicts of interest and (iv) where applicable, to put in place a contractual separation.

    It should be noted that every institution should, where applicable, be able to provide proof of the adequate management of potential conflicts of interest, proof that can notably be provided by reference to the conflicts of interest policy put in place, in the case where all or part of the services other than that of depositary are provided to the UCITS by the legal entity of the depositary or by entities linked to the depositary by a common management or control.

28. In the application of the principles of CSSF Circular 12/546, a credit institution is permitted to be either a direct or an indirect shareholder of a management company when it is acting as depositary of UCI(TS) managed by that management company or to have a qualifying holding in such a management company. In the case of a qualifying holding, the management company must identify the conflicts of interest which could result from this holding and must strive to eliminate them in accordance with the procedures foreseen by the conflicts of interest policy of the management company. By analogy, the credit institution must in this case also establish a procedure relating to the policy and to the management of potential conflicts of interest.

29. The principle of the independence of the depositary in relation to a UCITS or to the management company of such UCITS as set out in CSSF Circular 12/546 also precludes the possibility of a director[3] of a UCITS within the meaning of Articles 27(1) or 102(1) and Article 129(5) of the 2010 Law or, as the case may be, of the management company, being employed by the depositary.

Chapter 2. Internal procedures and written procedures or contracts with external persons relating to the UCITS depositary function

30. The depositary shall establish internal written procedures relating to the acceptance and the performance of a contract appointing the depositary of a UCITS and establish written procedures or contracts with the external persons with whom the depositary is required to work in so far as the performance of each of its UCITS depositary mandates is concerned. "External persons" within the meaning of this chapter, shall mean all persons with whom a depositary will work in the performance of its duties as a UCITS depositary (i.e. those external persons who are not appointed by the depositary itself, such as, for example, the registrar agent of a UCITS, as well as those external persons who are appointed by the depositary itself, for example a delegate or a subcontractor of the depositary). The internal procedures must, alongside the procedure for the acceptance of the appointment as UCITS depositary, document the stages and the operational process relating to the performance of the contracts appointing the depositary, namely the performance of the different tasks linked to the depositary function at the level of the depositary itself. The written procedures or contracts with the external persons shall cover the organisation of any relationships with third parties with whom the depositary is required to work within the context of the provision of services of a UCITS depositary. These internal procedures and written procedures or contracts with external persons shall cover in an appropriate manner all of the aspects relating to the function of a UCITS depositary and take into account the specific characteristics of the UCITS for whom the credit institution is acting as depositary. The written procedures or contracts with the external persons may be established between the depositary and the external person directly, or may be covered by the written procedures or contracts between the UCITS and/or its management company and the external persons concerned.

31. It is the responsibility of the internal audit function or of the internal control department of the depositary to verify the existence and appropriateness of these internal procedures and written procedures or contracts with external persons as well as ensuring their periodic update and at least once a year. The internal audit function or the internal control department shall also verify the effective application of the internal procedures and written procedures or contracts with external persons. This requirement applies in particular to the internal procedures and written procedures or contracts with the delegates and subcontractors of the depositary.

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[3] *Dirigeant*

Sub-Chapter 2.1. Internal procedures

32. The internal procedures which shall be established by the depositary must in particular:

- describe in a general manner the type of UCITS (on the basis of the legal nature and the investment strategy and policy of the UCITS) for which the credit institution can and is disposed to act as depositary of a UCITS;

- ensure the implementation of a preliminary control, either through adequate procedures and/or an approval committee for the appointment as depositary of a UCITS, with the aim of ensuring that for any new appointment as the depositary of a UCITS, the credit institution identifies and examines, in relation to every UCITS, the specific characteristics of the UCITS, particularly in terms of operational and legal risks. Through this preliminary control, it shall be ensured that the credit institution accepts to act as depositary in full knowledge and having taken into account the risk profile and operational complexities of a given UCITS;

- indicate the person(s) responsible for the UCITS "depositary bank" business line;

- describe in a general manner how the depositary will perform its duty as depositary of a UCITS, taking into account the different types of UCITS in particular on the basis of their investment policy (a description of the general operational model) and the specific UCITS where the internal operational model for certain UCITS differs from that of the general operational model (description of the specific operational model for one or more UCITS);

- generally describe the human and technical resources put in place for the performance of the duties as depositary of a UCITS; and

- document in a detailed manner the due diligence criteria applied by the institution.

Sub-Chapter 2.2. Written procedures or contracts with external persons

33. In addition to the internal procedures, the depositary of a UCITS shall also establish written procedures (with the external persons who have not been appointed by the depositary itself such as, for example, the registrar agent of a UCITS) or contracts (with the external persons who have been appointed by the depositary itself, such as, for example, a delegate or a subcontractor of the depositary) with all the persons with whom the depositary is required to work in the performance of its duties as depositary of a UCITS. The implementation of these written procedures or contracts shall ensure that the operational stages of the interaction of the depositary with each given third party, which are necessary for the proper performance of the obligations linked to the depositary's mandate, are adequately documented. These written procedures or contracts may take the form of operating memoranda or service level agreements. These written procedures or contracts with external persons must in particular provide for a procedure with the administrative agent of the UCITS and, as the case may be, the registrar agent of the UCITS, the contracts and procedures to be put into place with the delegates as well as the contracts and procedures with the subcontractors of the depositary. The depositary must determine the external persons with whom it is necessary to establish such a procedure or contractual documentation and the form and the complexity of each of these.

34. The objective of the contracts and written procedures with the external persons to be established by the depositary as required in Chapter 2. is to document the operational procedure(s) between the depositary and the third parties, who, as the case may be, have been formally appointed by the UCITS. In this regard, the requirement that the depositary must put in place contracts and written procedures with external persons is without prejudice to the obligation applicable to the UCITS to put in place a contract with each of the service providers who have been appointed by the UCITS.

Chapter 3. Organisational arrangements to be established in relation to the assets of a UCITS

Sub-chapter 3.1. Clarifications concerning the general aspects of the organisational provisions under the 2010 Law and the Delegated Regulation

35. The 2010 Law and the Delegated Regulation contain important provisions concerning the duties of the depositary, and in particular the organisational measures to be put in place by the depositary with regard to the assets of a UCITS. These provisions revolve primarily around (i) a division of assets into two categories, namely (a) the category of financial instruments that may be held in custody and b) the category of other assets (in which the sub-category of cash is to be distinguished), and (ii) a precise definition of the tasks to be accomplished by the depositary with regard to these categories and sub-categories of assets. This is how the 2010 Law and the Delegated Regulation define the organisational measures to be put in place with regard to the keeping of accounts and records (Articles 13, 16 and 17 of the Delegated Regulation), the segregation rules at the different levels of a custody chain (Articles 13, 16 and 17 of the Delegated Regulation), the rules concerning the delegation by the depositary of tasks linked to these assets (Articles 18*bis*, 34*bis*, and 39 of the 2010 Law and Articles 15 and 16 of the Delegated Regulation) and rules concerning cash monitoring (Articles 9 to 11 of the Delegated Regulation). These provisions are combined with a revised liability regime for the depositary according to the category of assets (Articles 19, 35 and 39 of the 2010 Law and Chapter 3 of the Delegated Regulation), with the obligation of restitution of lost financial instruments that may be held in custody as regards UCITS and unitholders and a more general liability regime based on negligence or intentional improper performance with regard to its other obligations under the 2010 Law.

36. It is recognised that the depositary may use the registers and accounts opened in its books for each UCITS or each sub-fund of a UCITS with multiple sub-funds, the registers and accounts opened in the accounting books of a UCITS with an administrative agent and extracts of accounts (e.g. the extracts of the collateral agent's statements) produced by third parties. At the level of the registers and accounts of the UCITS in the accounting books of the administrative agent, this requires that the depositary has access to the accounting data of the administrative agent which permits it to know at any moment the assets reflected in the books of the administrative agent for the account of the UCITS or for each of the sub-funds of the UCITS for UCITS with multiple sub-funds, and that the depositary performs due diligence on the administrative agent and/or on all of the third parties which are covered by the accounting system used and from which it can be concluded that a correct and exhaustive accounting of all of the assets has been carried out by the administrative agent and/or other third party or ensures that the review of the accounting system is subject to a control of type ISAE 3402/SSAE16. According to Articles 18(5), 34(4) and 39 of the 2010 Law, the depositary shall regularly provide the management company or the investment company with a full inventory of all the assets of the UCITS. The production of a comprehensive inventory/statement of all the asset positions of a UCITS or, as the case may be, of each of the sub-funds of a UCITS with multiple sub-funds in which the UCITS is invested, is mandatory in relation to the end of the financial year of a UCITS in view of the audit of the annual accounts to be published by each UCITS.

37. The comprehensive inventory/statement of all the asset positions of a UCITS must include all guarantees or securities which belong to a UCITS or to a given sub-fund of a UCITS with multiple sub-funds.

Sub-chapter 3.2. The safekeeping of assets

38. The 2016 Law and the Delegated Regulation have also revised the depositary regime by introducing a new Community definition of the concept of safekeeping of assets. The concept of safekeeping is thus defined as the obligation of custody with regard to financial instruments that may be held in custody (Articles 18(4)(a), 34(3)(a) and 39 of the 2010 Law), as the requirement for record-keeping and ownership verification for the other assets (Articles 18(4)(b), 34(3)(b) and 39 of the 2010 Law) and as the obligation of cash flow monitoring (Articles 18(3), 34(2) and 39 of the 2010 Law. The Delegated Regulation clarifies the organisational measures which apply to the monitoring of financial flows (cash) in Articles 9

and 10, the safekeeping duties for financial instruments that may be held in custody in Article 13 and concerning the safekeeping duties regarding the ownership verification and record-keeping of other assets.

39. With reference to the assets which the depositary itself ensures the custody of, the depositary must open in its books, in the name of the UCITS, or as the case may be, in that of each of the sub-funds of a UCITS with multiple sub-funds, one or more accounts which record in the depositary's books all the assets which are owned by the UCITS and which it holds in custody.

40. The credit institution acting as depositary is also required to respect the rules provided for by Article 37-1(7) of the 1993 Law as well as the implementing measures contained in Articles 18 and 19 of the Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and to the rules of conduct in the financial sector. The depositary must account for the securities and other fungible financial instruments held on deposit or registered in an account separately from its own assets and off-balance sheet. With regard to the deposit of the assets of a UCITS with the depositary, the depositary and the UCITS may have recourse to a fiduciary contract between the depositary and the UCITS.

Sub-chapter 3.3. Organisational arrangements to be implemented in relation to assets held in custody by a delegate at the first level below the depositary

41. In the context of the depositary regime put in place by the 2016 Law and the Delegated Regulation, the use of delegates by the depositary qualifies technically as a delegation of the safekeeping of assets (Articles 18*bis*, 34*bis,* and 39 of the 2010 Law) according to the categorisation of assets established by these texts and the Delegated Regulation. It should be noted that according to Articles 18*bis*(2), 34*bis*(2) and 39 of the 2010 Law, the depositary must demonstrate that there is an objective reason for the delegation.

42. In case safekeeping is delegated, the depositary shall ensure in particular that an appropriate and documented due diligence procedure is implemented and applied according to the provisions of Articles 18*bis*(2), 34*bis*(2) and 39 of the 2010 Law and Article 15 of the Delegated Regulation.

43. The due diligence procedure must be re-examined regularly, at least once a year, and is to be made available to the CSSF upon request. It is the responsibility of the internal audit function or of the internal control department of the depositary to monitor the existence, periodic update and effective application of this procedure.

44. The applicable organisational measures shall be applied effectively at all times and shall not be considered as exhaustive, namely that they neither establish in detail the way in which a depositary shall exercise the necessary skill, care and diligence, nor fix all the measures to be taken by the depositary under the applicable regulatory provisions. It is for the depositary to adapt the criteria on the basis of which it fulfils its duties, particularly in terms of diligence, depending on particular situations that may present themselves, for example on the basis of the specific features applicable to the custody chain of a given asset or the specific features applicable to each of the delegates or specific rules applicable in the jurisdiction where the delegate is established, or possible exceptional circumstances which may present themselves.

45. With regard to the structuring of accounts with delegates, every account which is opened with a delegate may take the form of a distinct common account or "omnibus account", it being understood that separate omnibus accounts must be opened or maintained by the delegates for those assets belonging to the depositary's clients which are managed collectively (namely those UCITS and other UCIs subject to the 2010 Law, the 2004 Law and the 2007 Law). In addition, omnibus accounts opened with a delegate for one or several clients of the depositary which are subject to collective management cannot be used for the assets of the depositary's other clients which are not managed collectively nor for the depositary's own assets.

46. In the case where the legal, regulatory or administrative provisions applicable in an investment market dictate other rules and require that the accounts be opened in another manner to the rules described above, the accounts may be opened in accordance with the requirements of such investment market provided that these rules are not contrary to the provisions of the 2010 Law and of the Delegated Regulation. The depositary shall therefore take all measures required and necessary, insofar as the rules of the investment market in question permit, to ensure an effective control over the assets in question and to ensure insofar as possible, that the assets belonging to the depositary's UCITS clients are protected from any insolvency of the entity with which the assets are held in custody.

Sub-chapter 3.4. Organisational arrangements to be implemented at the level of the depositary in relation to those entities below the delegates in the custody chain of an asset

47. By analogy to the qualification of the use of delegates by the depositary as being a delegation of the safekeeping of assets (Articles 18*bis,* 34*bis* and 39 of the 2010 Law), the regime put in place by the 2016 Law and the Delegated Regulation with regard to the use of entities below the delegates in the custody chain qualifies as a sub-delegation of the safekeeping of assets (Articles 18(4), 34(3) and 39 of the 2010 Law and Articles 15.4, 16.2 and 17.4 of the Delegated Regulation. As is the case for delegation, there must be an objective reason for any sub-delegation.

48. The depositary shall ensure that each delegate applies at its level the rules relating to due diligence and segregation, by analogy, with regard to each entity immediately below this delegate.

49. The accounts opened or maintained with entities below the delegates in the custody chain of an asset may take the form of omnibus accounts. These omnibus accounts do not necessarily have to be either distinct omnibus accounts specific to the depositary's UCITS clients (or the depositary's clients whose assets are managed collectively), or distinct omnibus accounts specific to the depositary.

50. The depositary must, in relation to each delegate, benefit from the right of access to information as referred to in Chapter 4 below, to ensure that it can exercise its obligations relating to the assets of a UCITS. It is for the UCITS to ensure that the depositary benefits from such rights, in particular, in the case that the accounts in question are opened, or the registration is in the name of the UCITS or of a sub-fund of a UCITS. The existence and the means by which the depositary can exercise its rights must be documented in an appropriate manner.

Sub-chapter 3.5. Organisational arrangements to be implemented in relation to the assets of a UCITS which cannot be held in custody

51. On the basis of Articles 18(5), 34(4) and 39 of the 2010 Law, the depositary should at all times have a comprehensive overview of all of the assets of a UCITS, including other assets which includes all cash. These other assets are subject to the obligation to verify the ownership and record-keeping in light of the establishment of the comprehensive inventory/statement of all the asset positions as referred to in points 36 to 37. To achieve a sufficient level of certainty that the UCITS is indeed the owner of such an asset, the depositary must ensure that it receives all the information it deems necessary to be satisfied that the UCITS holds the ownership over this asset. If necessary, the depositary should request additional proof from the UCITS or, as the case may be, from a third party.

Sub-Chapter 3.6. Due diligence obligations with regard to the investment in a target UCI(TS) in which a given UCITS can invest

52. In terms of the due diligence obligations relating to an investment in a target UCI(TS) in which a given UCITS can invest, it is necessary to take into account the manner in which the UCITS proceeds to invest in a target UCI(TS), in particular how the registration of the investment is carried out by the issuer or its agent, for example a registrar or a transfer agent (see Sub-chapter 6.3.).

In applying this principle, the depositary is obliged to carry out the due diligence required on the basis of the criteria laid down in Article 15 of the Delegated Regulation where the investment in the target UCI(TS) is made through a specialised intermediary (other than the registrar of the target UCI(TS)) through which the investments in one or more target UCI(TS) are taken into account on behalf of the UCITS.

In the case where the investment in a target UCI(TS) is made directly with the target UCI(TS) or by an agent of the latter, for example a registrar or transfer agent of this target UCI(TS), the investment of the UCITS in this target UCI(TS) shall not give rise to specific due diligence obligations at the level of the depositary.

Sub-chapter 3.7. Accounting and adequate monitoring of financial flows

53. The depositary is required to ensure adequate monitoring of accounting and cash flows according to Articles 18(3), 34(2) and 39 of the 2010 Law and Articles 9 to 11 of the Delegated Regulation.

54. Where the depositary holds cash belonging to UCITS clients, the depositary must make adequate arrangements in order to ensure the preservation of the rights of its UCITS clients. The credit institution acting as depositary is, in this case, required to respect the rules under Article 37-1(8) of the 1993 Law as well as the implementing measures contained in Article 18 of the Grand Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector.

55. Concerning the deposit of cash of a UCITS with the depositary or with a third party, the depositary, the UCITS and/or, as the case may be, the third party may have recourse to the mechanism of a fiduciary contract.

56. The accounts opened in relation to the execution of issues (and redemptions) of units, in which the amounts to be received (or paid) by the UCITS are or will be received pending payment to the UCITS or, where applicable, to the unitholders (collection accounts), must be opened with the entities as defined in Articles 18(3)(b), 34(2)(b) and 39 of the 2010 Law.

Chapter 4. Right of access to information

57. The depositary must, at any time, have a right of access, as soon as possible, to all relevant information which the depositary needs to fulfil its legal obligations. The right of access to information must permit the depositary to have access to information which is available notably from a delegate, clearing broker, broker or registrar or transfer agent, which is necessary for the depositary as regards transactions and asset positions. The obligation to have a right of access to information is notably considered to be fulfilled when the depositary has a right to access the reporting system by means of access to a website (e.g. concerning positions in target UCITS held with the registrar agent or transfer agent of the target UCI(TS) or with regard to the assets of a UCITS held for all or part by the entity acting as broker, or concerning financial derivative instruments agreements).

58. In relation to guarantees and securities, this right of access to information must also exist as regards every entity with whom collateral given to a UCITS can be found, such as in particular every collateral agent (e.g. upon the transfer of legal ownership as guarantee to the UCITS in the books of a collateral manager acting as collateral agent, as against this collateral manager).

59. With regard more particularly to the safekeeping obligations of other assets, it should be noted that the depositary must also make sure that procedures are in place so that the registered assets can only be assigned, transferred, exchanged or delivered if the depositary itself or the third party to which the safekeeping has been delegated has been informed.

Chapter 5. Escalation procedure between the depositary and the UCITS and/or its management company (Articles 3.3 and 14.4 of the Delegated Regulation)

60. According to Articles 3.3, 6(b) and 14.4 of the Delegated Regulation, the depositary shall establish and implement one or more escalation procedures to be followed by the depositary in case of the detection of a potential discrepancy or irregularity which, without prejudice to the obligations applicable to the UCITS and/or its management company, notably provides for the notification to the UCITS and/or its management company and to the competent authorities if the situation cannot be rectified.

61. In a similar manner and without prejudice to the obligations applicable to the depositary, one or more escalation procedure(s) shall also be established and implemented by the UCITS and/or its management company regarding the procedures to be followed by the UCITS and/or its management company in case of the detection of a potential discrepancy or irregularity, which provides notably for the notification of the situation to the depositary and to the competent authorities if the situation cannot be clarified or rectified.

62. The escalation procedure(s) concerning the intervention of the depositary in relation to the UCITS shall identify the persons working for the UCITS whom the depositary must contact when it launches such a procedure and must provide for an obligation on the part of the UCITS to inform the depositary of the measures it has taken following an intervention by the depositary, as the case may be, to remedy a breach of the rules applicable to the UCITS. This or these procedure(s) must also provide that in the case that the UCITS fails to take appropriate measures within a reasonable period of time, the depositary must inform the CSSF thereof. These elements apply by analogy to the escalation procedure(s) concerning the intervention of the UCITS in relation to the depositary. This or these escalation procedure(s) shall form part of the contract appointing the depositary (the contract or its annexes). It is permissible for the contract appointing the depositary or its annexes to contain the principles of the escalation procedure(s) and for the details to be described in other more easily modifiable documents (such as for example, a service level agreement or an operating memorandum).

63. Any notification by or to the UCITS shall be made by or to the management company for those UCITS in contractual form (common funds). For UCITS in corporate form (investment companies) having appointed a management company, the notifications to a UCITS shall be made to the management company at the same time as they are made to the investment company. Notifications to self-managed investment companies shall be made by or to the investment company. Notifications to the depositary shall be performed by the UCITS or its management company, as the case may be.

Chapter 6. Specific organisational arrangements at the level of the depositary in view of the investment policy of the UCITS or the techniques that the UCITS employs

64. This chapter provides clarifications regarding certain specific situations which arise when a UCITS pursues an investment policy which requires the implementation of specific organisational arrangements at the level of the depositary, in order to guarantee, at any time, the protection of the interests of the unitholders of the UCITS.

Sub-chapter 6.1. Specific organisational arrangements with regard to guarantees or securities, including in the case of recourse to a collateral agent

65. Insofar as a UCITS has recourse to techniques or invests in instruments which give rise to guarantees or securities in the form of financial instruments or cash by one or the other party to a transaction, the depositary must be able to determine whether or not the collateral provided to or by a third party for the benefit of the UCITS is owned by the UCITS.

66. The assets of a UCITS which are given by the UCITS as a guarantee to a third party, or which are received as a guarantee by the UCITS from a third party, are safekept by the depositary for so long as such assets are owned by the UCITS. The custody of these assets may in this case be structured according to one of the following three plans: (1) the collateral taker is the

depositary of the UCITS or is appointed by the latter or the UCITS as custodian of the collateralised assets of the UCITS; (2) the depositary of the UCITS appoints a delegate who acts on behalf of the collateral taker; or (3) the collateralised assets remain with the depositary of the UCITS and are indicated as collateralised in favour of the collateral taker.

67. In its assessment of whether or not the collateral given to a third party or by a third party for the benefit of the UCITS is owned by the UCITS, the depositary must take into account the legal nature, and/or the legal, regulatory or contractual provisions which are applicable to the transaction which gave rise to the establishment of this guarantee or security. The UCITS must ensure that the depositary receives all necessary information to this effect.

68. When a UCITS enters into transactions in OTC financial derivative instruments and has recourse to effective portfolio management techniques, it is necessary to take into account particularly the ESMA guidelines on ETFs and other UCITS issues, as implemented into the Luxembourg regulatory framework by CSSF Circular 14/592 concerning the financial guarantees received by a UCITS within the framework of these transactions or efficient portfolio management techniques and whose purpose it is to reduce counterparty risk, as well as Regulation EU 2015/2365 on transparency of securities financing transactions and of reuse.

69. Without prejudice to the responsibility of the UCITS in the matter, when guarantees or securities are put in place for the benefit of the UCITS (be it in the form of a transfer of the legal ownership or by means of a pledge), the depositary is:

    a) in the context of securities lending transactions, required to ensure that the securities to be received by the UCITS are received prior to or at the same time as the transfer of the securities lent and that at the end of the securities lending transaction, the security will be remitted at the same time or after the return of the securities lent and that the level of securities is adequate throughout the duration of the securities lending transaction;

    b) obliged to verify that the securities to be received comply with the legal and regulatory provisions in force, taking into account particularly the rules contained in CSSF Circular 14/592.

70. In the case where guarantees or securities are transferred by the UCITS or delivered to the UCITS by a counterparty to a collateral manager (who is also acting as collateral agent) or to a collateral agent and insofar as this is permitted in particular pursuant to CSSF Circular 14/592, a tripartite agreement between the UCITS, this collateral manager or collateral agent, as well as the depositary should be put in place. In this case the entity in charge of the management and administration of the guarantees and securities which the UCITS is required to give or receive (in principle the collateral manager) must ensure that an adequate level of guarantees and securities exists in the pool of assets which serve as guarantees and securities. The collateral manager must also ensure that any substitution of assets in this pool of guarantees and securities is carried out according to the rules defined by the parties within the framework of the agreement put in place. The depositary must, in this context, benefit from the right of access to information in accordance with points 57 to 59 of this Circular, and benefit from a real time and online access to a reporting tool of this collateral manager (who also acts as collateral agent) or of this collateral agent or to daily reports made available to the depositary by the collateral manager (who also acts as collateral agent) or of this collateral agent, concerning all the information which is necessary to allow the depositary to fulfil its obligations. Where this collateral manager or collateral agent can act as delegate of the depositary in relation to the safekeeping of assets of a UCITS, the depositary must benefit from a right of refusal concerning the choice and appointment of this collateral manager or collateral agent as far as the delegation of safekeeping of assets is concerned. It should be noted that this right of refusal of the depositary shall apply more generally to any third party appointed by the UCITS which, in the context of services provided to the UCITS, is vested with the safekeeping of the assets of that UCITS.

Sub-chapter 6.2. Organisational arrangements in the case that the UCITS invests in financial derivative instruments (financial derivative instruments dealt in on a regulated market or OTC financial derivative instruments)

71. In the case where a UCITS invests in financial derivative instruments, the UCITS must ensure that the depositary is able to monitor the following aspects with regard to the transactional aspect of an investment in a financial derivative instrument and in order to permit the depositary to exercise its legal obligations in relation to the safekeeping of the assets and its monitoring duties:

a) it must know all the positions of the UCITS in such financial derivative instruments, in particular in relation to the positions held with clearing brokers or with a central counterparty. In order to fulfil this obligation, it is notably permitted that the depositary may use the registers and accounts opened in the accounting books of the UCITS with its administrative agent, base itself on reconciliations carried out by the latter or use extracts of the accounts produced by third parties as specified under point 36 of this Circular (subject to the conditions enounced thereunder);

b) it must monitor on a daily basis the statements made with regard to initial margin deposits carried out by the UCITS with an intermediary (e.g. a broker) and the variation margin the context of financial derivative instruments dealt in on a regulated market or OTC financial derivative instruments. The depositary may notably, in this context, base itself on the broker statements received from the brokers involved in a given transaction or on reconciliations carried out by the administrative agent.

Sub-chapter 6.3. Organisational arrangements applicable with regard to investments by a UCITS in target UCI(TS)

72. Concerning the due diligence obligations relating to target UCI(TS) in which a UCITS has invested, reference is made to point 52 of this Circular.

73. As far as more specifically the registration of the investments of a UCITS in target UCI(TS) is concerned, it is possible that the registration of such investment with a target UCI(TS) or with an agent of the latter may be made directly in the name of the investing UCITS, provided that the national law of the target UCI(TS) does not require a different registration. The investment of a UCITS in a target UCI(TS) may also be registered in the name of the depositary with an indication that the assets belong to the clients of the depositary, in the name of the depositary with an indication of the name of the investing UCITS or the name of the sub-fund concerned in the case of a UCITS with multiple sub-funds or only in the name of the investing UCITS or of a sub-fund of the latter in the case of a UCITS with multiple compartments, this last option only being available where the national law of the target UCI(TS) permits or requires this. In the latter case, procedures must be established with the target UCI(TS) or the agent of the latter in order to ensure that the positions opened in the name of the investing UCITS cannot be assigned, transferred, exchanged or delivered unless the depositary has been informed in advance and the depositary has access without undue delay to those documents which evidence each transaction and each position. The provisions under this point also apply to UCITS which qualify as fund of funds or feeder funds within master-feeder structures.

Chapter 7. Organisational arrangements relating to reconciliations

74. It is the responsibility of the depositary of a UCITS to establish procedures which cover all of the reconciliations and reconciliation methods (including the reconciliations used by depositaries that have been carried out by third parties) to be put in place by the depositary in accordance with Articles 3.2, 10, 13.1.c) and 16.1.c) of the Delegated Regulation, to comply with its obligations concerning the assets of a UCITS, to effectively apply such procedures and to review such procedures periodically. These procedures must not only cover the details of the reconciliation processes to be established, but must also clarify the measures to be taken by the depositary in order to resolve any differences in the reconciliation within a reasonable period of time.

75. It is the responsibility of the internal audit function or of the internal control department of the depositary to monitor the existence, the regular update and effective application of these reconciliation procedures and to ensure the resolution within a reasonable period of time of any discrepancies in reconciliations identified.

76. Regarding the reconciliation procedures, particular attention must be paid to the following aspects:

a) the procedures to be established must cover all of the assets and transactions relating to the assets of the UCITS;

b) on the basis of the provisions of Articles 18(5), 34(4) and 39 of the 2010 Law, the depositary is obliged to produce a comprehensive inventory/ statement of all the asset positions of a UCITS (or as the case may be of each sub-fund of a UCITS with multiple sub-funds) in which the UCITS is invested at the close of the financial year. This implies that any differences in reconciliation identified by the depositary or a third party are justified at the moment of the production of a comprehensive inventory/ statement of all the asset positions of a UCITS.

Chapter 8. Obligation to put in place a contingency plan

77. With the objective of ensuring the continuity of the activities of a depositary in case of events likely to interrupt the ability of the depositary to provide its depositary services with regard to its UCITS clients, every depositary must put in place a contingency plan.

78. The depositary shall develop a contingency plan with respect to each market in which the depositary appoints a third party to which safekeeping functions are delegated according to the rules laid down in Article 15.5 of the Delegated Regulation.

Part IV. Specific obligations of the depositary

Chapter 1. Obligations relating to the ongoing administration of assets

79. The depositary shall fulfil all operations concerning the ongoing administration of the assets of a UCITS in its custody.

80. This means that the depositary must in particular cash in dividends, interest and securities due, exercise rights over securities and, in general, carry out any other operations concerning the ongoing administration of securities and liquid assets belonging to the UCITS.

81. To the extent that the operations referred to above relate to assets which are not held in custody by the depositary itself, the latter may, on a contractual basis confer the performance thereof to delegates with whom the assets are effectively deposited. In such case, and in order to satisfy its oversight duty relating to the assets of the UCITS, the depositary must organise its relations with the delegates in such a manner that it is immediately informed of all operations which these delegates carry out in the context of the ongoing administration of the assets that they have on deposit.

Chapter 2. Oversight and control duties

82. The depositary is vested with oversight and control duties on the basis of Articles 18(2), 34(1) and 39 of the 2010 Law and Articles 3 to 8 of the Delegated Regulation. The changes introduced by the 2016 Law and the Delegated Regulation are relatively limited, and mainly revolve around the fact that the 5 types of oversight duties are carried out with regard to all the UCITS, whatever their legal structure and the clarifications provided in the Delegated Regulation on the tasks to be fulfilled by the depositary in order to be discharged from its obligations with regard to its oversight duties. Regarding these oversight and control duties, it is the responsibility of the internal audit function or of the internal control department of the institution acting as depositary to control the existence, periodic update and effective application of the procedures connected with the control duties.

Part V. Information obligations of the depositary applicable to the UCITS

83. In accordance with Articles 3.4, 9.3 and 14.1 of the Delegated Regulation, the UCITS shall ensure that the depositary has access, without undue delay, upon its appointment and on an ongoing basis, to all relevant information which it needs to comply with its obligations in relation to the depositary activity for a given UCITS.

84. Where the home Member State of the management company of a UCITS is not the Grand Duchy of Luxembourg, the depositary shall sign a written agreement with this management company regulating the flow of information deemed necessary to allow it to perform its functions, particularly in relation to the safekeeping of the assets and in relation to monitoring and in general in relation to legislative, regulatory or administrative provisions applicable to the depositary.

85. The parties to the contract appointing the depositary may agree to transmit electronically all or part of the information which is to be communicated.

Part VI. Information obligations applicable to the depositary vis-à-vis the UCITS

86. In order to ensure that every UCITS is informed of any element affecting the assets of a UCITS which is known to or comes to the attention of the depositary in the exercise of its functions, the depositary shall ensure that the UCITS, or, as the case may be, its management company, is informed without undue delay of any element relating to the assets of the UCITS, to the extent that the depositary has knowledge of it, and in particular concerning all events affecting the life of the assets.

87. The information obligations applicable to the depositary *vis-à-vis* the UCITS are to be read in conjunction with the obligations applicable under the escalation procedure in accordance with Chapter 5. of Part III. of this Circular.

Part VII. Information obligations of the depositary vis-à-vis the authorities

88. The depositary is required to provide the CSSF, upon request, with all the information which the depositary has obtained in the performance of its functions and which may be necessary to permit the CSSF to supervise the compliance with the laws and regulations applicable to the depositary as well as to UCITS for which the credit institution acts as depositary.

89. If the CSSF is not the competent authority for the supervision of the management company of the UCITS, it shall communicate the information received to the respective competent authorities.

90. In the context of the escalation procedure to be implemented on the basis of Chapter 5. of Part III. of this Circular, the depositary may be required to notify the CSSF of any event disclosed/notified by the depositary to the UCITS in the context of this escalation procedure, when the UCITS has failed to take adequate measures within a reasonable period of time.

Part VIII. Specific provisions where a contract appointing a depositary is terminated during the life of the UCITS

91. In case where a contract appointing a depositary is terminated during the life of a UCITS without a new contract appointing a depositary being in place and in force at the end of the notice period applicable to a termination, it is necessary to ensure that the assets of the UCITS are subject to an adequate safekeeping, according to the nature of these assets, in the interests of the UCITS and its unitholders (safekeeping measures). These safekeeping measures are generally necessary in the event of the liquidation of a UCITS and/or in case there is no longer an appointed depositary. It is the responsibility of each UCITS to inform the CSSF of all cases where measures for the safekeeping of the UCITS' assets have to be put in place.

92. As regards this function of safekeeping the assets of a UCITS in liquidation or without a depositary, the credit institution that last acted as depositary is responsible for keeping open all the securities and cash accounts for the different assets of that UCITS which are held in custody by this institution at the moment of the removal or withdrawal of the UCITS and until the appointment of a new depositary or until the closure of the liquidation of the UCITS.

Entry into force and miscellaneous provisions

93. This Circular shall enter into force on 13 October 2016.

94. CSSF Circular 14/587, as amended by CSSF Circular 15/608, is repealed and replaced by this Circular with effect from the date stated in point 93.

95. Chapter E ("Rules relating to the depositary of a Luxembourg UCI") of IML Circular 91/75 of 21 January 1991 no longer applies to UCITS.

Annex 1. List of information concerning the functions of a UCITS depositary which must be kept up-to-date and sent to the CSSF on a punctual, periodic or annual basis[4] (see the points below)

a) name and title of the person(s) responsible for the UCITS "depositary bank" business line (at the moment of the appointment of the person(s) responsible);

b) internal organigram of the institution, in particular of the services intervening in the context of the UCITS depositary function for the purpose of monitoring the sufficiency and adequacy of the structures necessary for the accomplishment of the general and specific duties (on an annual basis);

c) the number of employees employed in the UCITS "depositary bank" business line (on an annual basis);

d) CV(s) of the person(s) responsible for the UCITS "depositary bank" business line (at the moment of the appointment of the person(s) responsible);

e) information on the technical resources (of the unit in charge of the depositary function within the credit institution, including a description of the IT system (hardware and software) used) (on an annual basis);

f) a list of delegates appointed by the depositary for the safekeeping of financial instruments that may be held in custody (on an annual basis) or information on the website on which such an up-to-date list is available;

g) a list of delegates and sub-contractors assisting the depositary in its duties and a description of the links with such delegates and subcontractors with, as the case may be, one or more diagrams explaining the method of operations of the depositary and the interaction with the delegates and subcontractors (on an annual basis);

h) a description of the links with the administrative agent and, if different, the registrar agent (if the administrative agent/registrar agent is the same legal entity as the depositary, a description of the elements ensuring a functional and hierarchical separation is required) (on an annual basis);

i) a template of the contract appointing the depositary (on an annual basis), accompanied by a matrix indicating where the different elements of Article 2.2 (points a) to p) of the Delegated Regulation are covered;

j) a list of procedures with an indication of the topic covered and the date of the last update covering the various aspects of the UCITS depositary function (on an annual basis);

k) a description of the types of UCITS (depending on their legal form as well as their investment policy) for which the depositary considers accepting to act as a depositary (on an annual basis).

[4] The annual information must be sent no later than 6 months after the closure of the financial statements of the depositary

9.

CSSF CIRCULAR 15/633

RELATING TO THE FINANCIAL INFORMATION TO BE FORWARDED QUARTERLY BY INVESTMENT FUND MANAGERS AND THEIR BRANCHES

CSSF Circular 15/633 relating to the financial information to be forwarded quarterly by investment fund managers and their branches

Luxembourg, 29 December 2015

To all investment fund managers

CSSF CIRCULAR 15/633

Re: Financial information to be provided quarterly by investment fund managers and their branches

Ladies and Gentlemen,

1. The purpose of this Circular is to extend the submission of financial information to all investment fund managers ("IFM") as defined in point 2 below. Indeed, until now, only management companies subject to Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment have had to transmit financial information quarterly to the CSSF based on CSSF Circular 10/467.

2. The term "IFM" includes the following entities:

   a) management companies under Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment (hereafter "15 MC");

   b) management companies under Articles 125-1 and 125-2 of Chapter 16 of the Law of 17 December 2010 on undertakings for collective investment (hereafter "16 MC");

   c) IFMs approved for external management under the Law of 12 July 2013 relating to alternative investment fund managers (hereafter "AIFM").

3. From 2016, all IFM, including their branches, must submit a range of financial information to the CSSF. This financial information will be used by the CSSF for the purposes of prudential supervision of IFMs.

4. IFMs must submit the financial tables to the CSSF on a quarterly basis which may be downloaded from the CSSF website under the heading "Legal Reporting" for the different types of IFM (http://www.cssf.lu/surveillance/vgi/sg15/reporting-legal/).

5. It should be noted that the financial tables must be submitted only once by an IFM with several authorisations (for example an IFM that has been authorised for the management of UCITS and AIFs).

6. **Reference dates:** All tables should be drawn up on a quarterly basis. The reference dates are the last day of each calendar quarter, namely 31 March, 30 June, 30 September and 31 December.

7. **Deadline for transmission:** The financial tables must be submitted to the CSSF by the 20th of the month following the reference date.

8. CSSF Circular 10/467 introduced an obligation to provide definitive tables which accurately reflect the figures audited by the approved statutory auditor at the end of each financial year. These definitive tables have to be transmitted to the CSSF within one month after the annual general meeting having approved the annual accounts.

9. **Transmission of data to the CSSF:**

a) 15 MCs shall continue to send the tables electronically following the technical instructions given in CSSF Circular 10/467. **Consequently, the current system of transmission remains unchanged.**

b) 16 MCs shall also send the tables electronically following the technical instructions given in CSSF Circular 10/467.

c) AIFMs must send the downloaded tables exclusively to the address aifm_reporting@cssf.lu. For the time being, they may not transmit the tables electronically as provided by CSSF Circular 10/467.

With regard to the completion of the tables by the AIFMs, the following guidelines should be respected:

- Line 13 of the sheet "Reporting MC" shall not be filled in;

- The AIFMs making the filing shall respect the same nomenclature as that provided by CSSF Circular 10/467. However, at reporting entity level, ANNNN should be indicated in place of SNNNN. The identification number NNNN can be found in the following file: http://www.cssf.lu/downloads/IDENTIFIANTS_AIFM.zip.

10. **Repeal provision:** This Circular repeals Chapter VI "Prudential supervision of a management company as referred to in Chapter 15 of the 2010 Law" of CSSF Circular 12/546.

11. **Entry into force:** This Circular enters into force with immediate effect. The first data to be transmitted by 16 MCs and AIFMs is the data as per 31 December 2015 to be filed on 29 February 2016 at the latest.

15 MCs shall continue to submit the tables within the timeframe mentioned in point 7 above

10.

CSSF CIRCULAR 14/598

RELATING TO THE OPINION OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA) ON THE REVIEW OF "CESR'S GUIDELINES ON A COMMON DEFINITION OF EUROPEAN MONEY MARKET FUNDS" (CESR/10-049)

CSSF Circular 14/598 relating to the opinion of the European Securities and Markets Authority (ESMA) on the review of "CESR's Guidelines on a common definition of European money market funds" (CESR/10-049)

Luxembourg, 2 December 2014

To all Luxembourg undertakings for collective investment and to all Luxembourg specialised investment funds, as well as to those involved in the operation and monitoring of these undertakings

CSSF CIRCULAR 14/598

Re: Opinion of the European Securities and Markets Authority (ESMA) on the review of "CESR's Guidelines on a common definition of European money market funds" (CESR/10-049)

Ladies and Gentlemen,

The purpose of this circular is to implement the amendments introduced by ESMA's Opinion (the "Opinion") of 22 August 2014 (Ref. ESMA/2014/1103) concerning "CESR's Guidelines on a common definition of European money market funds" (Ref. CESR/10-049) (the "MMF Guidelines") into the Luxembourg regulatory framework governing undertakings for collective investment subject to the Law of 17 December 2010 ("UCIs") and specialised investment funds subject to the Law of 13 February 2007 ("SIFs").

As a reminder, the MMF Guidelines were published on 19 May 2010 by the Committee of European Securities Regulators (now ESMA) and were implemented in the Luxembourg regulatory framework through CSSF Circular 11/498. These guidelines, in application of Box 1, apply to all UCIs or SIFs labelling or marketing themselves as money market funds.

ESMA's Opinion meets the requirements of Article 5(b)1. of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (the "Regulation"), as amended by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013, according to which the European Supervisory Authorities shall review and remove, where appropriate, all references to credit ratings in existing guidelines and recommendations where such references have the potential to trigger sole or mechanistic reliance on these credit ratings.

In accordance with the aforementioned amended Regulation, ESMA reviewed the MMF Guidelines and came to the conclusion that there were references to credit ratings that have the potential to trigger sole or mechanistic reliance on credit ratings in relation to the assessment of the credit quality of money market instruments in which money market funds may invest.

Consequently, ESMA is of the view that point 4 of Box 2 of the MMF Guidelines relating to short-term money market funds, point 2 of Box 3 relating to money market funds and the explanatory texts relating thereto should be amended.

These amendments provide notably that management companies (or investment companies which have not designated a management company) shall apply an internal documented assessment of the credit quality of money market instruments allowing them to determine whether a money market instrument is of high quality.

More specifically, the points of the Guidelines referred to above were replaced by the following:

a) Point 4 of Box 2:

"4. For the purposes of point 3a), ensure that the management company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company's internal assessment should have regard to, inter alia, those credit ratings. While there should be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality."

b) Point 2 of Box 3:

"2. May, as an exception to the requirement of point 4 of Box 2, hold sovereign issuance of a lower internally-assigned credit quality based on the MMF manager's own documented assessment of credit quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company's internal assessment should have regard to, inter alia, those credit ratings. While there should not be mechanistic reliance on such external ratings, a downgrade below investment grade or any other equivalent rating grade by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of appropriate quality. 'Sovereign issuance' should be understood as money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank."

This circular enters into force with immediate effect.

The Opinion, which includes the revised version of the guidelines, is annexed to this circular. It is also available on ESMA's website at http://www.esma.europa.eu/.

Annex 1: *ESMA Opinion: Review of the CESR guidelines on a Common Definition of European Money Market Funds (Ref. ESMA/2014/1103)*

11.

CSSF CIRCULAR 14/592

RELATING TO THE GUIDELINES OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA) ON ETFs AND OTHER UCITS ISSUES

CSSF Circular 14/592 relating to the guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues

Luxembourg, 30 September 2014

To all Luxembourg undertakings for collective investment in transferable securities and to those involved in the operation and monitoring of these undertakings.

CSSF CIRCULAR 14/592

Re: Guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues

Ladies and Gentlemen,

We refer to CSSF Circular 13/559 on the guidelines of the European Securities and Markets Authority (hereafter "ESMA") on ETFs and other UCITS issues.

The purpose of this Circular is to implement the amended version of the "Guidelines for competent authorities and UCITS management companies – Guidelines on ETFs and other UCITS issues (Ref. ESMA/2014/937EN)" (hereafter the "Guidelines") published on 1 August 2014 by ESMA into the Luxembourg regulatory framework applicable to UCITS subject to Part I of the Law of 17 December 2010 relating to undertakings for collective investment (hereafter the "Law").

The Guidelines are annexed to this Circular. The English version as well as the French and German translations are available on ESMA's website at the address http://www.esma.europa.eu/.

The amendments to the Guidelines concern paragraphs 43(e) and 48 relating to the diversification of collateral received by UCITS for the purpose of reducing exposure to counterparty risk in OTC financial derivative transactions and efficient portfolio management techniques.

More specifically, by derogation from the rule that a basket of collateral with an exposure to a given issuer cannot exceed 20% of the net asset value, the new Guidelines allow UCITS to be fully collateralised in different transferable securities and money market instruments issued or guaranteed by a Member State, its local authorities, a third country or a public international body to which one or more Member States belong, on condition that they receive transferable securities from at least six different issues where the transferable securities from a single issue should not account for more than 30% of the UCITS' net asset value.

The introduction of this derogation is accompanied by the obligation to ensure adequate transparency in the prospectus and in the annual report, in accordance with the provisions of points 43(e) and 48 of the Guidelines, respectively.

In this context, the CSSF wishes to specify that the transferable securities and money market instruments covered by this derogation must, as for all collateral received, be (amongst other) of high credit quality, and highly liquid in order to reduce UCITS' counterparty risk exposure in OTC financial derivative transactions and efficient portfolio management techniques.

Moreover, in general, the CSSF wishes to reiterate that, in application of point 43(f) of the Guidelines, the risks linked to the management of collateral must be identified, managed and mitigated by the risk management process that management companies within the meaning of chapter 15 of the Law (hereafter "management companies") and investment companies which have not designated a management company within the meaning of Article 27 of the Law (hereafter "SIAG") must use in accordance with Article 42, paragraph (1) of the Law, as specified in CSSF Regulation 10-4 and Circular 11/512.

Consequently, the management of the risks linked to collateral must be an integral part of the risk management policy to be implemented by the risk management function of management companies and SIAGs under Articles 10, 13 and 43 of CSSF Regulation 10-4.

The complete list of criteria governing the receipt of collateral being used to reduce UCITS' counterparty risk exposure in OTC financial derivative transactions and efficient portfolio management techniques is included in Section XII. "Management of collateral for OTC financial derivative transactions and efficient portfolio management techniques" of the Guidelines.

The Guidelines revoke and replace the "Guidelines for competent authorities and UCITS management companies – Guidelines on ETFs and other UCITS issues (Ref. ESMA/2012/832EN)" implemented through CSSF Circular 13/559.

This Circular enters into force on 1 October 2014. As from this date, the amendments to the Guidelines apply pursuant to the transitional provisions indicated under paragraphs 71 and 72 of the said document.

Annex 1: *Guidelines for competent authorities and UCITS management companies – Guidelines on ETFs and other UCITS issues (Ref. ESMA/2014/937EN)*

12.

CSSF CIRCULAR 14/591

RELATING TO THE PROTECTION OF INVESTORS IN CASE OF A SIGNIFICANT CHANGE TO AN OPEN-ENDED UNDERTAKING FOR COLLECTIVE INVESTMENT

CSSF Circular 14/591 relating to the protection of investors in case of a significant change to an open-ended undertaking for collective investment

Luxembourg, 22 July 2014

To all Luxembourg undertakings for collective investment subject to the Law of 17 December 2010

CSSF CIRCULAR 14/591

Re: Protection of investors in case of a significant change to an open-ended undertaking for collective investment

Ladies and Gentlemen,

According to an existing well-established supervisory practice, the CSSF requires for each significant change affecting investors' interests in an open-ended undertaking for collective investment ("UCI") governed by the Luxembourg Law of 17 December 2010 relating to UCIs (the "Law of 2010") that sufficient time is provided to these investors in order for them to make an informed decision on the envisaged change and that, in the event of disagreement, they are given the possibility to request redemption or conversion of their shares/units free of redemption or conversion charges. The purpose of this Circular is to expressly lay down this administrative practice and to provide written clarifications.

1. Background

According to Article 151 (1) of the Law of 2010, the prospectus shall include the information necessary for investors to be able to make an informed judgement on the investment proposed to them. In this context, the CSSF assesses whether an envisaged change to the prospectus requires additional measures to protect the interests of the investors in the UCI. It is understood that this will not be the case for every change, but given that, *inter alia*, investors in UCIs are essentially retail investors, the CSSF is of the view that they have to be given sufficient time to make an informed decision about a change which is significant enough to potentially affect the investors' interests and have an impact on the basis on which they made their existing investment.

2. Process

When considering a significant change to their structure, organisation or operations, UCIs should question whether there is a high probability that an investor, informed of such a change, would reconsider its investment in the UCI. A UCI should therefore analyse the potential impact of any envisaged change on its investors (i.e. compare the investors' interests/situation before and after implementation of the change) and submit the proposed change, together with appropriate explanations for the change, to the CSSF. This should be done well in advance of the relevant change becoming effective.

The CSSF reserves the right, on a case-by-case basis, to determine, based on the information provided, whether any envisaged change at the level of a UCI should be considered significant and, as the case may be, to request a notification to investors. A significant change may, in principle, only be implemented after the expiry of the notification period.

In conformity with the CSSF's current administrative practice, the minimum period for notifying investors of a significant change to the UCI they are invested in should be **one (1) month**.

During this one-month period before the entry into force of the significant change, investors have the right to request the repurchase or redemption of their units without any repurchase or redemption charge. In addition to the possibility to redeem units free of charge, the UCI may also (but is not obliged to) offer the option to investors to convert their units into units of another UCI (or, in case the change affects only one sub-fund, into units of another sub-fund of the same UCI) without any conversion charges.

The CSSF may nevertheless agree, by way of a duly justified prior request for derogation, not to impose such a notification period with the possibility for investors to redeem or convert their units free of charge (for example where all the investors of the relevant UCI agree with the envisaged change). Similarly, the CSSF may agree only to impose a notification period for duly informing the investors of the relevant change before it becomes effective, but without the possibility for investors to redeem or convert their units free of charge.

For the sake of completeness, the notification period referred to in this Circular is without prejudice to the prior notice period(s) required by law for investors to approve such events. The content of the Circular is also without prejudice to the specific requirements of other competent authorities in jurisdictions (inside and outside of the European Union) where the UCI is registered for distribution.

3. Entry into force

This Circular is immediately applicable as from the date of its publication.

13.

CSSF CIRCULAR 14/589

RELATING TO THE DETAILS CONCERNING CSSF REGULATION NO. 13-02 OF 15 OCTOBER 2013 RELATING TO THE OUT-OF-COURT RESOLUTION OF COMPLAINTS

CSSF Circular 14/589 relating to the details concerning CSSF Regulation No. 13-02 of 15 October 2013 relating to the out-of-court resolution of complaints

Luxembourg, 27 June 2014

To all professionals subject to the prudential supervision of the CSSF

CSSF CIRCULAR 14/589

Re: Details concerning CSSF Regulation No. 13-02 of 15 October 2013 relating to the out-of-court resolution of complaints

Ladies and Gentlemen,

This CSSF circular aims to clarify the implementation of CSSF Regulation No. 13-02 relating to the out-of-court resolution of complaints ("CSSF Regulation No. 13-02") by the supervised institutions.

CSSF Regulation No. 13-02 was published in Mémorial A – No. 187 of 28 October 2013. Sections 1 and 3, which include provisions on the handling of requests for the out-of-court resolution of complaints filed with the CSSF, entered into force on 1 January 2014.

Section 2 of CSSF Regulation No. 13-02, which specifies certain obligations incumbent upon professionals regarding the handling of complaints, will enter into force on 1 July 2014. As from this date, professionals of the financial sector will have to adapt their internal procedures to the requirements of the new CSSF Regulation.

CSSF Regulation No. 13-02 aims to implement a clearly defined regulatory framework for complaint handling in order to serve the best interest of the complainants and to ensure efficient complaint management within the supervised institutions.

Out-of-court complaint resolution has been dealt with so far in Circular IML 95/118 relating to customer complaint handling. CSSF Regulation No. 13-02 was drafted in order to modernize the framework of said Circular and in order to specify certain obligations incumbent upon professionals with the aim to ensure adequate internal handling of complaints received by professionals.

CSSF Regulation No. 13-02 already takes into account, pending their transposition into national law, the principles of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, as well as the (ninth) Principle on "Complaints Handling and Redress" included in the Ten G20 High-Level Principles on Financial Consumer Protection drafted by the OECD and published in October 2011 and the "Guidelines for handling consumer complaints in the securities (ESMA) and banking sectors (EBA)" drafted by the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA).

1. Procedure for complaint handling at professionals

The professionals under the prudential supervision of the CSSF shall have a complaint management policy that is set out in a written document and formalised in an internal complaint settlement procedure. This procedure shall be efficient and transparent, in view of

the reasonable and prompt complaint handling. It shall include all aspects of complaint handling within the institution and specify the terms and conditions applicable where the complaints are handled at the level of the professional and where the CSSF is involved in the handling of a request for the out-of-court resolution of a complaint, respectively.

The professionals shall ensure that each complaint as well as the measure(s) taken to handle them are properly registered. The registration arrangements are left to be determined by each professional, with respect to the number of complaints received. However, the registration shall be at least computerised and secured.

It is essential that a good internal organisation of complaint handling is put in place in order to ensure full compliance with all the provisions of CSSF Regulation No. 13-02.

In this respect, Articles 15 and 16 of CSSF Regulation No. 13-02 include a description of the conduct to be followed by professionals within the context of the handling of the complaints submitted to it. Each complaint shall, at all times, be properly handled and within a reasonable time, in view of the nature of the problem raised in the best interest of the complainants. No complaint shall remain unanswered by the professional. The measures referred to in Article 15 and 16 of CSSF Regulation No. 13-02 are not exhaustive and should be completed when this proves necessary in the light of the number or the complexity of the complaints. This may include the establishment of a telephone hotline/call centre dedicated to complaints.

2. Director in charge of the complaints - Details on Article 15

The professional's management is in charge of implementing, within the institution, the policy and procedures relating to the provisions of CSSF Regulation No. 13-02. The policies and procedures shall be laid down in writing. The professional's management shall ensure the correct application of these policies and procedures. It entrusts one of its members with the task of handling complaints.

The director in charge shall inform the relevant staff of its institution of the policies and procedures required by CSSF Regulation No. 13-02 and any change thereto.

The director in charge shall determine the human and technical means required to properly implement the policies and the procedures in question. S/he shall ensure that compliance with these policies and relevant procedures is checked by the compliance function of the professional and its internal audit function on a regular basis.

The internal procedure of the professional shall organise the communication to the director in charge of all the necessary data on the complaints received at all levels. In particular, these data shall describe the problems identified, the corrective measures taken and the follow-up on these measures.

When, in view of the nature, the number or complexity of the complaints, the professional considers that it is appropriate to designate one or several persons in charge of the complaints, the director in charge may delegate the management of these complaints internally provided that the CSSF is notified on the arrangements to ensure the full implementation of the provisions of Section 2 of CSSF Regulation No. 13-02 beforehand. However, the director in charge shall keep ongoing knowledge and control of the handling of the complaints internally. Vis-à-vis the CSSF, the director in charge remains the sole contact person.

Moreover, the professionals shall ensure that each complainant is informed of the name and contact information of the person in charge of his/her file. As far as possible, that person will be the contact person of the complainant throughout the internal handling procedure as regards his/her complaint.

3. Communication of information to the CSSF

Article 16 of CSSF Regulation No. 13-02 provides that the manager in charge is required to communicate to the CSSF, on an annual basis, a table including the number of complaints registered by the professional, classified by type of complaints, as well as a summary report of the complaints and of the measures taken to handle them.

In accordance with CSSF Regulation No. 13-02, a complaint shall mean a "complaint filed with a professional to recognise a right or to redress a harm". Thus, simple requests for information or clarification cannot be considered as complaints.

The CSSF provides professionals with a sample form allowing satisfying the requirement to communicate a table including the number of complaints registered by the professional, classified by type of complaints. That form is attached to this circular. Professionals may, where appropriate, use another table model if the latter better suits their situation.

As Article 16 of CSSF Regulation No. 13-02 enters into force on 1 July 2014, the first documents (table and report) shall be transmitted to the CSSF (to the attention of the relevant prudential supervision department) at the latest on 1 March 2015 and shall cover the period from 1 July 2014 to 31 December. Eventually, the documents (table and report) shall be communicated no later than 1 March of each year and shall cover the previous calendar year. As regards the management companies referred to in Article 2 of CSSF Regulation No. 10-04, this communication should be received by the CSSF at the latest one month after the ordinary general meeting having approved the annual accounts of the management company.

4. Repeal of Circular IML 95/118 concerning customer complaint handling

Circular IML 95/118 concerning customer complaint handling is hereby repealed.

ANNEX

Commission de Surveillance du Secteur Financier
Postal address: L-2991 Luxembourg

Address (Head office):
110, route d'Arlon
L-1150 Luxembourg

Table listing the claims registered by the professional (sub-paragraph 1 of Article 16(3) of CSSF Regulation No. 13-02 relating to the out-of-court resolution of complaints)

1. GENERAL DATA ON YOUR INSTITUTION

1.1 Name of the institution	_____
1.2 Identification number*	
1.3 Name of the director in charge of complaint handling	_____

2 COMPLAINTS REGISTERED BY YOUR INSTITUTION

2.1. General information on complaints

2.1.1. Reference period	From _____ to _____
2.1.2. Total number of complaints received by your institution during the reference period	_____

2.2. Number of complaints by category

Categories	Number of complaints
Complaints that do not relate to a specific product or service	
Staff behaviour	_____
Banking secrecy	_____
Provision of documents (statements, etc.)	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Accounts and payment services	
Account opening refusal	_____
Account termination	_____
Account blocking	_____
Dispute of a transaction	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____

* Including letter "B" (Bank), "P" (PFS), etc. indicating the type of activity of the institution

Savings products	
Savings account termination	_____
Yield	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Consumer credits	
Loan refusal	_____
Loan termination	_____
Request for debt restructuring	_____
Early repayment	_____
Interest rate	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Mortgage loans	
Loan refusal	_____
Loan termination	_____
Request for debt restructuring	_____
Early repayment	_____
Interest rate	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Home loan and savings accounts	
Contract termination	_____
Yield	_____
Early repayment	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____

Payment cards	
Card refusal	_____
Card withdrawal	_____
Unauthorised use	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Web Banking	
Service unavailable	_____
Technical failure	_____
Others (please specify)_____	_____
TOTAL	_____
Safe	
Access to safe	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Investment activities	
Conflict of interests	_____
Dispute on order execution	_____
Quality of advice	_____
Non-observance of the client's investment profile	_____
Non-compliance with the management agreement	_____
Pricing/Fees	_____
Others (please specify)	_____
_____	_____
TOTAL	_____
Undertakings for collective investment	
Prospectus	_____
Investment policy	_____
Subscription/Redemption of shares/units	_____
Advertising document	_____
Others (please specify)	_____
_____	_____
TOTAL	_____

	Other categories of complaints (please specify)	
_____		_____
_____		_____
_____		_____
_____		_____
TOTAL		_____
	Other categories of complaints (please specify)	
_____		_____
_____		_____
_____		_____
_____		_____
TOTAL		_____
	Other categories of complaints (please specify)	
_____		_____
_____		_____
_____		_____
_____		_____
TOTAL		_____

14.

CSSF CIRCULAR 13/559

RELATING TO THE GUIDELINES OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA) ON ETFs AND OTHER UCITS ISSUES

CSSF Circular 13/559 relating to the Guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues

Luxembourg, 18 February 2013

To all Luxembourg undertakings for collective investment in transferable securities and those who intervene in the functioning and the control of these undertakings

CSSF CIRCULAR 13/559

Re: Guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues

Ladies and Gentlemen,

This Circular transposes the "*Guidelines for competent authorities and UCITS management companies – Guidelines on ETFs and other UCITS issues (Ref. ESMA/2012/832EN)*" (hereafter "the guidelines") published by the European Securities and Markets Authority (ESMA) on 18 December 2012 into the Luxembourg regulatory framework applicable to UCITS subject to Part I of the Law of 17 December 2010 relating to undertakings for collective investment (hereafter "the Law of 17 December 2010").

This document is annexed to this Circular. The English version, as well as the French and the German translations, can be consulted on ESMA's website through the following link: http://www.esma.europa.eu/.

These guidelines aim to reinforce the protection of investors and cover in particular the aspects as summarised in section I.

I. Summary presentation of the guidelines

a. Index-tracking UCITS

The guidelines furnish clarifications regarding the information that index-tracking UCITS (including index-tracking leveraged UCITS) must publish in the prospectus, the key investor information document (KIID) as well as the annual report. This includes, for example, information on tracking errors, how the index will be tracked and the leverage policy.

Regarding index-tracking leveraged UCITS, the guidelines provide additional clarifications on the limits and the calculation of global exposure.

b. UCITS ETFs

The guidelines impose transparency obligations on UCITS ETFs that fall within the definition of part II ("Definitions") of the aforementioned document. These obligations concern, amongst other things, the use of the identifier "UCITS ETF" that these UCITS will have to use in their name, their management regulations or articles of incorporation respectively, their prospectus, their key investor information document (KIID) and their marketing communications.

They also require actively managed UCITS ETFs to inform investors of the fact that they are "actively managed" and how the investment policy is applied.

Furthermore, the guidelines clarify in which circumstances investors must be allowed to request the repurchase of their shares or units directly from the UCITS ETF without going through the secondary market.

c. Efficient portfolio management techniques

While reiterating certain provisions implemented by the Law of 17 December 2010 and the Grand-Ducal Regulation of 8 February 2008, ESMA defines the information that must be set out in the prospectus and the annual reports regarding efficient portfolio management techniques. In this context, it has been clarified that all the revenues arising from these techniques have to be returned to the UCITS after deducting direct and indirect operational costs arising therefrom.

Moreover, in accordance with the guidelines, UCITS must ensure that they are able at any time to recall securities/cash subject to a securities-lending transaction or a repurchase/reverse repurchase agreement or to terminate at any time any securities lending agreement or repurchase/reverse repurchase transaction into which they have entered.

d. Financial derivative instruments

Regarding financial derivative instruments, the guidelines clarify in particular for UCITS that enter into a total return swap or invest in other financial derivative instruments with similar characteristics that the assets held must comply with the diversification limits set out in Articles 43, 44, 45, 46 and 48 of the Law of 17 December 2010. Similarly, in accordance with Article 42(3) of the Law of 17 December 2010 and Article 48(5) of CSSF Regulation 10-4, these UCITS must ensure that the underlying exposures to the total return swap or to the other financial derivative instruments with similar characteristics are taken into account in the calculation of the investment limits laid down in Article 43 of the Law of 17 December 2010.

In this context, besides certain requirements concerning transparency at the level of the prospectus and the annual report, the guidelines also clarify under which conditions the contract concluded between a UCITS and a counterparty must be considered as an investment management delegation.

e. Management of collateral for OTC financial derivative transactions and efficient portfolio management techniques

The guidelines establish the quantitative and qualitative criteria applicable to collateral used to reduce counterparty risk resulting from OTC financial derivative transactions and efficient portfolio management techniques, such as, for example, the limitation of issuer risk linked to a basket of collateral to 20% of the net asset value of the UCITS or the putting in place of a haircut policy.

In this context, the guidelines stipulate that any collateral received other than cash must not be sold, reinvested or pledged. Regarding collateral received in cash, point 43 j) of the guidelines specifies the types of permitted reinvestments.

Furthermore, the exposures resulting from OTC financial derivative transactions and efficient portfolio management techniques must be combined when calculating the counterparty risk limits referred to in Article 43 of the Law of 17 December 2010.

It should also be noted that the guidelines, as specified in the footnotes on pages 4 to 6, modify boxes 9, 26 and 27 of the document "*CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref. CESR/10-788)*".

f. Financial indices

Finally, the guidelines provide clarifications in relation to financial indices notably in the area of diversification limits, representation, the rebalancing frequency of the components, the publication of the calculation method and the independent valuation.

In this context, certain provisions of the document "*CESR's Guidelines concerning eligible assets for investment by UCITS – The classification of hedge fund indices as financial indices – July 2007 (Ref. CESR/07-434)*" have been reiterated in the guidelines, so that they will henceforth be applicable to all financial indices.

Particular attention should be paid to footnote 7 of the guidelines which modifies the document "*CESR's Guidelines concerning eligible assets for investment by UCITS (Ref. CESR/07-044b)*" with respect to commodity indices. Consequently, UCITS will in future have to ensure that the composition of every commodity index in which they invest is sufficiently diversified regarding the limits of 20%/35% set out in article 44 of the Law of 17 December 2010.

II. Effective Date

This Circular enters into force on 18 February 2013, the date as of which the guidelines are applicable by means of the transitional provisions set out in Part XIV of this document.

Annex: "*Guidelines for competent authorities and UCITS management companies – Guidelines on ETFs and other UCITS issues (Ref. ESMA/2012/832EN)*" of 18 December 2012

15.

CSSF CIRCULAR 13/557

RELATING TO THE REGULATION (EU) NO 648/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 4 JULY 2012 ON OTC DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES

CSSF Circular 13/557 relating to the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

Luxembourg, 23 January 2013

CSSF CIRCULAR 13/557

Re: Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

Ladies and Gentlemen,

We refer to the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (hereafter, "EMIR")[1], published in the Official Journal of the European Union No L 201/1 of 27 July 2012 and which has entered into force on 16 August 2012.

The purpose of EMIR is to introduce new requirements to improve transparency and reduce the risks associated with the derivatives market. EMIR also establishes common organisational, conduct of business and prudential standards for central counterparties as well as organisational and conduct of business standards for trade repositories.

As those rules take the legislative form of a Regulation of the European Parliament and the Council, they are legally binding and directly applicable in all Member States without transposition into national law, as from the day of entry into force. Thus, the EMIR framework is binding in its entirety and directly applicable.

However, a number of provisions must still be clarified through additional regulations by the European Commission (delegated and implementing acts based on technical standards to be drafted by the European Securities Markets Authority ESMA and the European Banking Authority EBA). These technical standards have been adopted by the European Commission on 19 December 2012 except for the specific point of colleges for central counterparties. In line with the relevant Union acts, the European Parliament and the Council still have a one-month scrutiny period (extendable by one month) within which they may object to any of these technical standards.

The actual date of application of these provisions will depend on the date of entry into force of these additional regulations. Further details thereto are available under

http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR.

[1] This document is available under:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF. (English version)
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:FR:PDF. (French version)

1. Scope of application and definitions

EMIR applies to all financial and non-financial counterparties established in the EU that enter into derivative contracts[2]. It applies indirectly to non-EU counterparties trading with EU parties.

EMIR also lays down uniform requirements for the performance of activities of central counterparties ("CCPs") and trade repositories ("TRs").

Article 2(5) of EMIR defines '**derivative**' or 'derivative contract' as a financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented by Article 38 and 39 of Regulation (EC) No 1287/2006;

Article 2(7) of EMIR defines '**OTC derivative**' or 'OTC derivative contract' as a derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC;

Article 2(8) of EMIR defines **'financial counterparty'** as an *investment firm* authorised in accordance with Directive 2004/39/EC, a *credit institution* authorised in accordance with Directive 2006/48/EC, *an insurance undertaking* authorised in accordance with Directive 73/239/EEC, *an assurance undertaking* authorised in accordance with Directive 2002/83/EC*, a reinsurance undertaking authorised* in accordance with Directive 2005/68/EC, *a UCITS* and, where relevant, its *management company,* authorised in accordance with Directive 2009/65/EC, *an institution for occupational retirement* provision within the meaning of Article 6(a) of Directive 2003/41/EC and *an alternative investment fund managed by AIFMs* authorised or registered in accordance with Directive 2011/61/EU;

'Non-financial counterparty' is defined in Article 2(9) of EMIR as "an undertaking established in the Union other than CCPs and financial counterparties".

'CCP' means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

'Trade repository' means a legal person that centrally collects and maintains the records of derivatives.

2. What are the requirements?

2.1. Clearing obligation (Article 4)

EMIR requires all financial counterparties, and those non-financial counterparties above the clearing threshold, to clear **all OTC derivative contracts** with a CCP authorised under Article 14 or recognised under Article 25 of EMIR pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with Article 5(2).

The clearing obligation will take effect once a CCP is authorised by the competent authority of the EU Member State where it is established (or recognised by ESMA in case of a CCP from a third country) to clear under the EMIR regime.

For that purpose, a counterparty shall become a clearing member, a client, or shall establish indirect clearing arrangements with a clearing member, provided that those arrangements do not increase counterparty risk and ensure that the assets and

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[2] Article 1.1. of EMIR: "This Regulation lays down clearing and bilateral risk- management requirements for over-the-counter ('OTC') derivative contracts, reporting requirements for derivative contracts and uniform requirements for the performance of activities of central counterparties ('CCPs') and trade repositories."

positions of the counterparty benefit from protection with equivalent effect to that referred to in Articles 39 (segregation and portability) and 48 (default procedures).

The classes of OTC derivatives subject to the clearing obligation, the CCPs that are authorised or recognised for the purpose of the clearing obligation as well as the dates from which the clearing obligation takes effect, including any phased-in implementation, the classes of OTC derivatives identified by ESMA in accordance with Article 5(3); the minimum remaining maturity of the derivative contracts referred to in Article 4(1)(b)(ii); the CCPs that have been notified to ESMA by the competent authority for the purpose of the clearing obligation and the date of notification of each of them will be published in the public register on ESMA's website.

For non-financial counterparties, the clearing thresholds for the different classes of derivatives are specified in the technical standards on the clearing obligation.

Basically, non-financial counterparties are subject to the clearing obligation if their OTC derivative positions are large enough and are not directly reducing risks related to the commercial activity or the treasury financing activity.

2.2. Risk mitigation techniques for OTC derivative contracts not cleared by a CCP (Article 11)

Contracts not cleared by a CCP will be subject to operational risk management requirements and bilateral collateral requirements.

2.2.1. *Operational risk management requirements (Article 11.1)*

All financial counterparties and all non-financial counterparties (including those below the clearing threshold (as explained under point 2.1.) that enter into an OTC derivative contract not cleared by a CCP are required to comply with risk management requirements.

They shall ensure, exercising due diligence, that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational risk and counterparty credit risk, including at least: (a) the timely confirmation of the terms of the relevant OTC derivative contract; (b) portfolio reconciliation, (c) dispute resolution and (d) portfolio compression. They shall mark-to-market on a daily basis the value of outstanding contracts. Where market conditions prevent marking-to-market, reliable and prudent marking-to-model shall be used.

2.2.2. Exchange of collateral (Article 11.3)

Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012.

Financial counterparties shall hold an appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral.

Non-financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after the clearing threshold is exceeded.

Basically, non-financial counterparties are subject to bilateral collateral requirements if their OTC derivative positions are large enough and are not directly reducing risks related to the commercial activity or the treasury financing activity.

This requirement of bilateral collateral exchange is applicable from the entry into force of the Regulation. However, the precise level and exact type of collateral to be exchanged will be specified by further regulatory technical standards which will be drafted jointly by ESMA, EBA and EIOPA and adopted by the European Commission by the way of EU regulations.

Before those technical standards enter into force, counterparties have the freedom to apply their own rules on collateral in accordance with the conditions laid down in Article 11(3). As soon as the aforementioned EU regulations enter into force, counterparties will have to change their rules to the extent necessary in order to comply with the rules laid down in the EU regulations. The latter will apply to relevant contracts concluded as of the date that they enter into force.

2.3. Reporting obligation (Article 9)

EMIR requires all financial and non-financial counterparties (including those below the clearing threshold) to report details of their **derivative contracts, whether traded OTC[3] or not,** to a trade repository.

The reporting obligation applies to derivative contracts which:

a) were entered into before 16 August 2012 and remain outstanding on that date;

b) are entered into on or after 16 August 2012.

Counterparties and CCPs have to report the details of any derivative contracts they have concluded and of any modification or termination of the contract to a trade repository authorised or recognised under the EMIR regime.

These details must be reported no later than the working day following the conclusion, modification or termination of the contract. Counterparties shall ensure that the details of their derivative contracts are reported without duplication.

A counterparty or a CCP which is subject to the reporting obligation may delegate the reporting of the details of the derivative contract.

Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract.

Where a trade repository is not available to record the details of a derivative contract, counterparties and CCPs shall ensure that such details are reported to ESMA.

3. Exemptions

3.1. Exemptions from the clearing obligation for pension scheme arrangements (Article 89.1 and 89.2)

For three years after the entry into force of EMIR, pension scheme arrangements as defined in Article 2(10) are exempted from the clearing obligation for OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to their financial solvency. The transitional period also applies to entities established for the purpose of providing compensation to members of pension scheme arrangements in case of a default.

No notification or prior approval is needed.

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[3] OTC derivative contracts as defined in Article 2(7) of EMIR (See point 1 above).

However, the OTC derivative contracts entered into by the above-mentioned entities during this period shall be subject to the risk mitigation techniques for OTC derivative contracts not cleared by a CCP, as specified in Article 11.

In relation to pension scheme arrangements referred to in Article 2(10) (c) and (d), the exemption from the clearing obligation shall be granted by the relevant competent authority for types of entities or types of arrangements after consultation with ESMA.

3.2. Intragroup exemption from the clearing obligation and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP

3.2.1 Intragroup exemption *from the clearing obligation (Article 4.2)*

Intragroup transactions in OTC derivatives contracts as described in Article 3 are not subject to the clearing obligation. The entity wishing to use this exemption has first to notify its competent authority (the CSSF for financial counterparties established in Luxembourg and under its supervision) in writing of its intent to make use of the exemption for the OTC derivative contracts concluded, not less than 30 calendar days before the use of the exemption.

Within 30 calendar days after receipt of that notification, the CSSF (in the case of financial counterparties established in Luxembourg and under its supervision) may object to the use of this exemption if the transactions between the counterparties do not meet the conditions laid down in Article 3, without prejudice to the right of the CSSF to object after that period of 30 calendar days has expired where those conditions are no longer met.

3.2.2 Intragroup exemption from the exchange of collateral (Article 11.5 – Article 11.11)

(a) Intragroup transactions between counterparties established in the same Member State

Intragroup transactions referred to in Article 3 that are entered into by counterparties which are both established in Luxembourg are exempted from the exchange of collateral provided that there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between counterparties. No notification or prior approval is needed.

(b) Intragroup transactions between financial counterparties established in Luxembourg and another EU Member State

Intragroup transactions referred to in Article 3(2)(a), (b) or (c) are exempted totally or partially from the exchange of collateral on the basis of the prior approval of both the competent authority in the other EU Member State and the competent authority in Luxembourg (the CSSF for financial counterparties established in Luxembourg and under its supervision), provided that the following conditions are fulfilled:

i) the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

ii) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

(c) Intragroup transactions between non-financial counterparties established in Luxembourg and another EU Member State

Intragroup transactions referred to in Article 3(1) are exempted from the exchange of collateral on the basis of a notification of their intention to apply the exemption to the designated competent authority responsible for supervising the application of the clearing obligation by non-financial counterparties.

The exemption conditions are the same as under point 3.2.2(b)(i) and (ii) above.

(d) Intragroup transactions between a counterparty established in Luxembourg and a counterparty established in a third country jurisdiction, other than intragroup transactions covered by (e).

An intragroup transaction referred to in Article 3(2)(a) to (d) is exempted totally or partially from the exchange of collateral, on the basis of the prior approval of the competent authority in Luxembourg (the CSSF for financial counterparties established in Luxembourg and under its supervision), under the conditions of point 3.2.2 (b)(i) and (ii) above.

(e) Intragroup transactions between a non-financial counterparty established in Luxembourg and a counterparty established in a third country jurisdiction

An intragroup transaction referred to in Article 3(1) is exempted from the exchange of collateral on the basis of a notification by the non-financial counterparty established in Luxembourg of its intention to apply the exemption to the designated competent authority responsible for supervising the application of the clearing obligation by non-financial counterparties.

The exemption conditions are the same as under point 3.2.2(b)(i) and (ii) above.

(f) Intragroup transactions between a financial counterparty and a non-financial counterparty one of which is established in Luxembourg and the other in another EU Member State

Intragroup transactions referred to in Article 3(1) are exempted totally or partially from the exchange of collateral, on the basis of the prior approval of the relevant competent authority responsible for supervision of the financial counterparty (the CSSF for financial counterparties established in Luxembourg and under its supervision), under the conditions of point 3.2.2(b)(i) and (ii) above.

The counterparty of an intragroup transaction which has been exempted from the exchange of collateral has to publicly disclose information on the exemption.

4. CCPs

EMIR introduces conditions and procedures for the authorisation of a CCP as well as organisational, conduct of business, and prudential requirements, and requirements related to interoperability arrangements, for CCPs.

4.1. Authorisation and supervision of a CCP (Articles 14 – 22)

CCPs are authorised and supervised by the authority competent for CCP supervision in the EU member state where the CCP is established, in collaboration with a college of the concerned competent authorities.

Once the authorisation is granted, it is effective for the entire territory of the European Union. The extension of services and activities not covered by the initial authorisation is subject to a request for extension to the CCP's competent authority.

4.2. Requirements for CCPs (Articles 26 – 50)

The articles mentioned in the heading relate among others to the organisational requirements of a CCP such as the setting up of a risk committee, record keeping, organisational and administrative arrangements to identify and manage any potential conflict of interest, business continuity policy and disaster recovery plan as well as outsourcing conditions. They also cover conduct of business rules, segregation and portability as well as prudential requirements.

As CCPs are systemic entities, they should have a sound risk-management framework to manage credit risks, liquidity risks, operational and other risks, including the risks that they bear or pose to other entities as a result of interdependencies. A CCP should have adequate procedures and mechanisms in place to deal with the default of a clearing member. In order to minimise the contagion risk of such a default, the CCP should have in place stringent participation requirements, collect appropriate initial margins, maintain a default fund and other financial resources to cover potential losses. In order to ensure that they benefit from sufficient resources on an ongoing basis, the CCP should establish a minimum amount below which the size of the default fund is not to fall under any circumstances.

5. Registration and supervision of trade repositories

EMIR also lays down conditions and procedures for registration of trade repositories, requirements for trade repositories including the duty to make certain data available to the public and the competent authorities listed under Article 81.3.

5.1. Authorisation and supervision of trade repositories (Articles 55 – 77)

Trade repositories are authorised and supervised by ESMA.

A legal person that intends to carry out trade repository activities and provide trade repository services has to submit an application for registration to ESMA. Once the authorisation is granted, it is effective for the entire territory of the Union.

5.2. Requirements for trade repositories (Articles 78 – 81)

A trade repository shall have robust governance arrangements, maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest, maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. (Article 78)

In case a trade repository offers ancillary services such as trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression services, the trade repository shall maintain those ancillary services operationally separate from the trade repository's function of centrally collecting and maintaining records of derivatives. (Article 78)

A trade repository shall have objective, non-discriminatory and publicly disclosed requirements for access by undertakings subject to the reporting obligation under Article 9. It has to publicly disclose the prices and fees associated with services provided under EMIR. (Article 78)

A trade repository shall have systems in place to identify operational risks, have an adequate business continuity policy and recovery plan and ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories in case of withdrawal of its registration. (Article 79)

It shall ensure the confidentiality, integrity and protection of the information received under Article 9 and shall record the information received under Article 9 for at least 10 years following the termination of the relevant contracts. (Article 80)

A trade repository shall collect and maintain data and shall ensure that the entities listed under paragraph 3 of Article 81 have direct and immediate access to the details of derivatives contracts they need to fulfill their respective responsibilities and mandates. It shall publish aggregate positions by class of derivatives on the contracts reported to it. (Article 81)

6. What should counterparties to derivative contracts do now?

Financial and non-financial counterparties should assess their EMIR readiness. Below are some questions which need to be considered:

- Which trade repository can you report to for the types of derivatives you trade?
- Will you report directly to the trade repository or delegate reporting to your counterparty or a third party?
- Which CCPs accept to clear the types of OTC derivatives you trade? Will you access clearing directly as a 'clearing member'? If not, you will need to be a client of a clearing member.
- Are your existing systems and processes adequate to implement the new operational risk mitigation requirements set out in EMIR?
- Do you have collateral agreements in place and sufficient collateral available to collateralise non-cleared OTC derivative trades?

7. When can entities start applying for exemptions from EMIR to the CSSF?

For intragroup exemptions, counterparties may start applying for exemption when technical standards relevant to the intragroup exemptions enter into force. ESMA and the national competent authorities are still developing the most appropriate process for applications.

Templates for the notifications and applications for exemption will be published on the CSSF's website.

Further information will be made available on the CSSF website as appropriate.

8. Useful links

The European Commission has published an FAQ on EMIR which is available under:

http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf

ESMA has set up a dedicated EMIR page on its website which is available under http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR

16.

CSSF CIRCULAR 12/548 (as amended by CSSF Circular 13/565)

RELATING TO THE ENTRY INTO FORCE OF REGULATION (EU) NO 236/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 14 MARCH 2012 ON SHORT SELLING AND CERTAIN ASPECTS OF CREDIT DEFAULT SWAPS AND DETAILS ON CERTAIN PRACTICAL ASPECTS OF NOTIFICATION, DISCLOSURE AND EXEMPTION PROCEDURES

CSSF Circular 12/548 (as amended by CSSF Circular 13/565) relating to the entry into force of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps and details on certain practical aspects of notification, disclosure and exemption procedures

Luxembourg, 30 October 2012

To natural or legal persons domiciled or established within the European Union or in a third country

CSSF CIRCULAR 12/548

(as amended by CSSF Circular 13/565)

Re: Entry into force of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps and details on certain practical aspects of notification, disclosure and exemption procedures

Ladies and Gentlemen,

We refer to the Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (the "**Regulation**").

To ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regard to the financial markets, and to ensure a high level of consumer and investor protection, the Regulation lays down a common European regulatory framework with regard to the requirements and powers relating to short selling and credit default swaps and aims at ensuring greater coordination and consistency between Member States where measures have to be taken in exceptional circumstances.

As those rules take the legislative form of a regulation of the European Parliament and the Council, they ensure that provisions directly imposing obligations on private parties to notify and disclose, as applicable, significant net short or uncovered positions relating to certain instruments are applied in a uniform manner throughout the Union. In addition, in order to reduce risks relating to certain categories of uncovered short selling, the Regulation is introducing a proportionate restrictions regime on uncovered short selling. Moreover, the Regulation confers powers on the European Securities and Markets Authority (**ESMA**) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council to coordinate measures taken by competent authorities or to take measures itself.

The scope of the Regulation is as broad as possible to provide for a preventive regulatory framework to be used in exceptional circumstances with a proportionate response to the risks that short selling of different instruments could represent. It is therefore only in the case of exceptional circumstances that competent authorities and ESMA will be entitled to take measures concerning all types of financial instruments, going beyond the permanent measures that only apply to particular types of instruments where there are clearly identified risks that need to be addressed.

The transparency regime set up by the Regulation applies regardless of where the natural or legal person is located, including in a third country, where that person has a significant net short position relating to the issued share capital of a company that has shares admitted to trading on a trading venue in the Union (provided the principal venue is not located in a third country) or a significant net short position in relation to sovereign debt issued by a Member State or by the Union, including the European Investment Bank, a Member State's government department, agency, special purpose vehicle or international financial institution established by two or more Member States that issues debt

on behalf of a Member State or on behalf of several Member States, such as the European Financial Stability Facility or the European Stability Mechanism.

To ensure consistent application of the Regulation, the European Commission has adopted a package of four implementing measures specifying technical aspects of certain key issues of the Regulation:

- Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares ("**Commission Delegated Regulation (EU) No 826/2012**");

- Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps;

- Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events ("**Commission Delegated Regulation (EU) No 918/2012**");

- Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments.

The European legislative framework on short selling and certain aspects of credit default swaps (i.e. the Regulation and the above four implementing measures) **fully applies from 1 November 2012, it is binding in its entirety and directly applicable in Luxembourg**,

Taking into account the Regulation, the decisions of the CSSF published on 19 and 29 September 2008 in relation to the prohibition of uncovered ("naked") short selling in publicly quoted banks and insurance companies are repealed as from 1 November 2012.

The present circular aims at providing practical details and guidance as regards certain aspects in relation to i) the notification or disclosure of significant net short positions to the CSSF in accordance with Articles 5 to 9 of the Regulation, ii) the exemption for market making activities and primary market operations under Article 17 of the Regulation and iii) the publication, by ESMA and by the CSSF, of relevant information in relation to the application of the Regulation.

1. Transparency relating to significant net short positions

Section 1 of this circular gives further details and clarification concerning the application of the provisions of Articles 5 to 9 on notification and disclosure of significant net short positions in relation to the issued share capital of a company and in relation to issued sovereign debt and on notification of uncovered positions in sovereign credit default swaps. The present section specifies in particular the notification on significant net short positions that must be submitted to the CSSF (being the relevant competent authority within the meaning of Article 2(1)(j) of the Regulation), the persons subject to the notification and disclosure requirements, the time limit for such notification and disclosure, the content of said notifications as well as the method of notification and disclosure.

a. Relevant competent authority in Luxembourg for receiving notifications of positions in relation to the issued share capital of a company

In accordance with Article 5(1) of the Regulation, a natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue shall notify the relevant competent authority, in accordance with Article 9, where the position reaches or falls below a relevant notification threshold which is 0.2% of the issued share capital of the company concerned and each 0.1% above that.

Pursuant to Article 6(1) of the Regulation, a natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue shall disclose details of that position to the public, in accordance with Article 9, where the position reaches or falls below a relevant publication threshold which is 0.5% of the issued share capital of the company concerned and each 0.1% above that.

The CSSF is the relevant competent authority for receiving the notifications of significant net short positions in relation to the issued share capital of a company, where the CSSF is the competent authority of the most relevant market in terms of liquidity (as defined in Chapter III of the Commission Regulation (EC) No 1287/2006) for the relevant shares concerned and where such shares are admitted to trading on a trading venue i.e. on a regulated market or a multilateral trading facility (MTF) within the meaning of Directive 2004/39/EC.

The CSSF publishes on the Short selling page of its website (http://www.cssf.lu) a complete list of issuers of shares in relation to which net short position notifications and disclosures pursuant to the Regulation are required to be made to the CSSF. Said list excludes shares that have been identified by the CSSF (being the relevant competent authority for such shares under the Regulation) as having their principal trading venue located in a third country. Indeed, pursuant to Article 16(1) of the Regulation, its Articles

5, 6, 12 and 15 shall not apply to shares of a company admitted to trading on a trading venue in the Union, where the principal venue for the trading of the shares is located in a third country.

b. Relevant competent authority in Luxembourg for receiving notifications of significant net short positions in relation to issued sovereign debt and uncovered positions in sovereign credit default swaps

Pursuant to Article 7(1) of the Regulation, a natural or legal person who has a net short position relating to issued sovereign debt shall notify the relevant competent authority, in accordance with Article 9 of the Regulation, where such a position reaches or falls below the relevant notification thresholds for the sovereign issuer concerned. The relevant notification thresholds consist of an initial amount and then additional incremental levels in relation to each sovereign issuer.

ESMA publishes on its website (http://www.esma.europa.eu/page/Short-selling) the notification thresholds for each sovereign issuer.

In accordance with Article 8 of the Regulation, where a competent authority suspends restrictions applicable to sovereign credit default swap transactions pursuant Article 14(2) of the Regulation, a natural or legal person who has an uncovered position in a sovereign credit default swap shall notify the relevant competent authority where such a position reaches or falls below the relevant notification thresholds for the sovereign issuer, as specified in accordance with Article 7 of the Regulation.

In relation to sovereign debt issued by a sovereign issuer as defined by the Regulation, the CSSF is the relevant competent authority for receiving the notifications

in relation to the sovereign debt issued by the Grand-Duchy of Luxembourg as well as those in relation to the sovereign debt issued by the European Investment Bank, the European Financial Stability Facility and the European Stability Mechanism.

The CSSF publishes on the Short selling page of its website (http://www.cssf.lu) a list of the sovereign debt issuers in relation to which it is the relevant competent authority for the purposes of the Regulation.

c. Persons subject to the notification and disclosure requirements

It is important to point out that pursuant to Article 10 of the Regulation, the notification and disclosure requirements under Articles 5, 6, 7 and 8 apply to natural or legal persons domiciled or established within the Union or in a third country.

References in the Regulation to natural and legal persons shall include registered business associations without legal personality.

d. Time limit for notification and disclosure

Where a natural or legal person holds a relevant position, the relevant notification or disclosure shall be made, pursuant to Article 9(2) of the Regulation, not later than at 15.30 on the following trading day (Luxembourg local time).

e. Method of notification and disclosure

In accordance with Article 9(1) of the Regulation, any notification or disclosure under Article 5, 6, 7 or 8 shall set out details of the identity of the natural or legal person who holds the relevant position, the size of the relevant position, the issuer in relation to which the relevant position is held and the date on which the relevant position was created, changed or ceased to be held.

Commission Delegated Regulation (EU) No 826/2012 specifies in its Annexes I and II the information which a notification must contain as well as the format to be used in the notification forms issued by the competent authority in accordance with Article 2(1) of said delegated regulation.

A notification made to the CSSF must contain the information specified in the "List of fields for notification purposes in Luxembourg" in Annex I to this circular. The said list specifies all the elements of information a notification must include and further explains the content required for certain fields and the common standards to be used in this respect. The notification itself must be made by using the "Format of the notification form for net short positions in Luxembourg" set out in Annex II to this circular.

The notification can be submitted to the CSSF either by the natural or legal person subject to the notification requirement (the "**position holder**") or by a third-party that has been authorised by the position holder to notify on its behalf.

According to Article 9(3) of the Regulation, the notification of information to a relevant competent authority shall ensure the confidentiality of the information and incorporate mechanisms for authenticating the source of the notification.

To that end, the CSSF has developed a web-based platform for the notification and disclosure of net short or uncovered positions pursuant to the Regulation (the "**short selling platform**"). The platform is made available at http://shortselling.cssf.lu.

In order to obtain authorised access to submit notifications on net short or uncovered positions on the said short selling platform, the natural or legal persons concerned must first have successfully registered on the platform as a reporting person for the notification procedure with respect to net short or uncovered positions. In the

registration process, the CSSF requires from the persons concerned information and documentation as regards the identity of the position holder and the reporting person (if different). Fields 1 to 7 of the "List of fields for notification purposes in Luxembourg" in Annex I to this circular set out the elements of information to be provided. The authentication documents to be provided are, depending whether the relevant persons are natural or legal persons, a copy of a valid official ID containing a photo and satisfying the passport and ID requirements in Luxembourg (e.g. passport, ID card) or a copy of an extract from the commercial register or comparable official register or list. Such documents will not be required where the persons concerned are subject to the prudential supervision of the CSSF. In addition, where the reporting person is different from the position holder, the CSSF will require a letter of confirmation of the position holder authorising the reporting person to fulfil the notification or disclosure requirements pursuant to the Regulation on behalf of the position holder. On completion of the authentication process, the reporting person obtains a user name and a password authorising it to file notifications on the short selling platform of the CSSF.

The notification forms for net short positions in relation to the issued share capital of a company that has shares admitted to trading on a trading venue, net short positions relating to issued sovereign debt and uncovered positions in sovereign credit default swaps (set out in Annex II to this circular) which shall be used for the notifications to the CSSF will be made available to the authorised reporting persons on the short selling platform. These persons will be able to directly fill in, on the short selling platform, the details of the net short or uncovered positions and submit the duly completed forms to the CSSF through the short selling platform. The forms are considered duly completed by the CSSF where they contain all the relevant information requested by the "List of fields for notification purposes in Luxembourg" set out in Annex I to this circular.

The CSSF insists that where pursuant to Article 6(1) of the Regulation, a natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue discloses details of that position to the public, the relevant field "Public disclosure requirement" (in the notification form) triggering a publication through the systems of the CSSF must be duly completed. In fact, according to the Regulation, the obligation to disclose details of its position to the public is the responsibility of the natural or legal person who has a net short position. Where the relevant field is duly completed, the CSSF will automatically disclose the relevant information on such net short positions in relation to the issued share capital of a company that has shares admitted to trading on a trading venue to the public by posting it on the Publications page of its short selling platform and considers that the relevant person has fulfilled its obligation to disclose the details of its position to the public.

Finally, in accordance with Article 2(3) of Commission Delegated Regulation (EU) No 826/2012, a natural or legal person who has submitted a notification which contains an error shall proceed, upon becoming aware of the error, to a cancellation of the erroneous notification on the short selling platform and where applicable, make sure that a public disclosure will be made through the short selling platform by using the same procedure as in the aforementioned paragraph. The natural or legal person concerned shall submit a new notification on the short selling platform, if necessary.

The CSSF will publish on the Short selling page of its website (http://www.cssf.lu) the detailed registration, notification and disclosure procedures.

2. Exemption for market making activities and primary market operations and ESMA guidelines in this respect

Section 2 of this circular details the application of the provisions of Article 17 of the Regulation on exemption for market making activities and primary market operations. The present section specifies notably the scope of the exemption, the notifications of intent to make use of an

exemption (a "**notification of intent**") which must be submitted to the CSSF (where it is the relevant competent authority), the information and documentation to be included in a notification of intent to the CSSF as well as the exemption process and the notification channel.

On 2 April 2013, ESMA published guidelines on the exemption for market making activities and primary market operations under Article 17 of the Regulation (Ref. ESMA/2013/74), entitled "Guidelines - Exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps" (the "**Guidelines**").

The Guidelines, which are annexed to this circular as Annex VI, provide further details and clarification on:

- the scope of the exemption for market making activities, including the required link between the relevant financial instrument, the trading venue or "equivalent" third country market and the market membership of the notifying entity;

- the definition of the relevant competent authority for notification, in particular for notifying entities from third countries;

- the process of notification of the intent to use the exemption and its content, including common templates for notification;

- the approach to processing the notification received by the relevant competent authority and the standards that the competent authority should take into account when assessing the eligibility of the notifying entity's activities for the exemption, and;

- the monitoring of the conditions of eligibility once the exemption is used.

The natural or legal persons concerned, who give to the CSSF a notification of intent to make use of the exemption for market making activities or authorised primary dealers activities in accordance with Article 17 of the Regulation, must comply with the Guidelines. They shall refer in particular to the details set out in Sections V, VI and VII of the Guidelines, in relation to the definition and scope of the exemption for market making activities, the general principles and qualifying criteria of eligibility for the exemption for market making activities, and the determination of the competent authority that should be notified by a third country entity not authorised in the Union.

a. Definition and scope of the exemption

- **Exemption for market making activities**

  Pursuant to Article 17(1) of the Regulation, Articles 5, 6, 7, 12, 13 and 14 shall not apply to transactions performed due to market making activities.

  According to Article 2(1)(k) of the Regulation, "market making activities" means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (l) of Article 2(1) of Directive 2004/39/EC, which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the European Commission pursuant to Article 17(2) of the Regulation where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities:

  (i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market;

(ii) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade;

(iii) by hedging positions arising from the fulfilment of tasks under points (i) and (ii).

Article 17(1) of the Regulation therefore exempts certain entities, when they are undertaking transactions due to market making activities as defined above, from net short position notification and disclosure requirements and the restrictions on uncovered short sales. The exemption applies only to the transactions carried out in performance of market making activities as defined in Article 2(1)(k) of the Regulation.

- **Exemption for authorised primary dealers activities**

Pursuant to Article 17(3) of the Regulation, Articles 7, 13 and 14 of the Regulation shall not apply to the activities of a natural or legal person where, acting as an authorised primary dealer pursuant to an agreement with a sovereign issuer, it is dealing as principal in a financial instrument in relation to primary or secondary market operations relating to the sovereign debt.

Article 2(1)(n) of the Regulation defines "authorised primary dealer" as a natural or legal person who has signed an agreement with a sovereign issuer or who has been formally recognised as a primary dealer by or on behalf of a sovereign issuer and who, in accordance with that agreement or recognition, has committed to dealing as principal in connection with primary and secondary market operations relating to debt issued by that issuer.

Under Article 17(3) of the Regulation, persons exempted as authorised primary dealers as defined in Article 2(1)(n) are therefore not required to notify net short positions relating to issued sovereign debt, are not subject to the restriction on uncovered short sales in sovereign debt and are not prohibited to enter into an uncovered sovereign credit default swap transaction. The exemption applies only to activities carried out in performance of authorised primary dealers activities as defined in Article 2(1)(n).

b. Relevant competent authority for the notification of intent

- **Persons domiciled in the EU**

  - Exemption for market making activities:
    A notification with respect to the exemption referred to in Article 17(1) of the Regulation must be made by the natural or legal person concerned to the competent authority of its home Member State. According to the definition set out in Article 2(1)(i) of the Regulation, the persons concerned who shall file their notification of intent to the CSSF are:

    - investment firms as defined in Article 1(9) of the Luxembourg law of 5 April 1993 on the financial sector;
    - credit institutions as defined in Article 1(12) of the Luxembourg law of 5 April 1993 on the financial sector;
    - firms as referred to in point (l) of Article 2(1) of Directive 2004/39/EC where they have their registered office, their head office or their domicile in Luxembourg.

- Exemption for authorised primary dealers activities:
  A notification with respect to the exemption referred to in Article 17(3) of the Regulation is made by the authorised primary dealer to the relevant competent authority in relation to the sovereign debt concerned. Accordingly, the CSSF is the relevant competent authority (as defined in Article 2(1)(j) of the Regulation) for receiving the notifications of intent in relation to the sovereign debt issued by the Grand-Duchy of Luxembourg, the European Investment Bank, the European Financial Stability Facility and the European Stability Mechanism.

- Exemption for market making activities and for authorised primary dealers activities:
  Pursuant to Article 17(8) of the Regulation, a third-country entity that is not authorised in the Union shall send the relevant notification referred to in paragraphs 5 and 6 of the said Article to the competent authority of the main trading venue in the Union in which it trades. Accordingly, where the main trading venue in the Union is the regulated market or the MTF operated by the Société de la Bourse de Luxembourg S.A., the CSSF is the relevant competent authority for receiving the notification of intent of the third-country entity concerned.

c. Notification 30 calendar days in advance and exemption process

Pursuant to Article 17(5) and 17(6) of the Regulation, the exemption shall apply only where the natural or legal person concerned has notified the CSSF in writing that it intends to make use of the exemption. The notification of intent must be made not less than 30 calendar days before the natural or legal person first intends to use the exemption.

Pursuant to Article 17(7) of the Regulation, the CSSF may prohibit the use of the exemption if it considers that the natural or legal person does not satisfy the conditions of the exemption. Any prohibition shall be imposed within the 30 calendar day period referred to above or subsequently if the CSSF becomes aware that there have been changes in the circumstances of the natural or legal person so that it no longer satisfies the conditions of the exemption. The 30 calendar day period commences once a complete notification of intent including all relevant information and documentation as specified in point 2(d) below has been submitted to the CSSF.

The exemption process does not constitute an authorisation or licensing process.

It should be noted that when processing a notification of intent and assessing whether a natural or legal person concerned satisfies the conditions of the exemption for market making activities or authorised primary dealers activities, the CSSF will take into account the Guidelines issued by ESMA in relation to the requirements of Article 17 of the Regulation.

Where the CSSF does not object to the use of the exemption, it will inform the person concerned accordingly in writing.

Where the CSSF decides to prohibit the use of the exemption, considering that the natural or legal person concerned does not satisfy or no longer satisfies the conditions of the exemption, it will justify its decision and inform the person concerned thereof in writing.

In accordance with Article 17(9) and 17(10) of the Regulation, a natural or legal person who has given a notification of intent shall as soon as possible notify in writing the CSSF where there are any changes affecting that person's eligibility to use the exemption, or if it no longer wishes to use the exemption.

d. Content of the notification of intent

A notification of intent and the accompanying documents may be provided to the CSSF in Luxembourgish, French, German or English.

In conformity with the Guidelines, a notification of intent shall be submitted to the CSSF in accordance with the template form provided in Annex III (Exemption for authorised primary dealers activities) and in Annexes IV and V (Exemption for market making activities) of this circular. Such notification of intent shall in particular include all the information and documentation detailed below:

- Exemption for authorised primary dealers activities:
  - Details of the notifying party;
  - Details of the contact person within the notifying party;
  - Copy of the agreement/recognition signed with a sovereign issuer or a person acting on its behalf.

- Exemption for market making activities:
  - Details of the notifying party;
  - Details of the contact person within the notifying party;
  - Status of the notifying party (credit institution, investment firm…);
  - Trading venue of which the notifying person is a member;
  - Description of the market making activities specifying particular capacity according to Article 2(1)(k) of the Regulation:
    1. Capacity under Article 2(1)(k)(i);
    2. Capacity under Article 2(1)(k)(ii) and the nature of client facilitation services:
       a. Fulfilling orders initiated by clients;
       b. Responding to clients' requests to trade.
  - For each capacity, the financial instrument(s) for which the intent to use the exemption is notified. It can take the form of a list of individual financial instruments or a clear specification of the instruments concerned (e.g. national equity index on a particular date), provided that it results in a closed list of specific instruments and allows the notified competent authority to unambiguously identify all individual instruments for which the exemption is declared;
  - In case of existing contractual agreement for provision of market making services, a description of the main duties and activities under the contract or a copy of the contract;

- Where the market making activities are carried out on instruments referred to in paragraph 30[1] of Section V of the Guidelines, e.g. exchange-traded funds: the corresponding category of financial instruments according to Part 1 and 2 of Annex I of Commission Delegated Regulation (EU) No 918/2012, e.g. category: shares/units of exchange-traded funds;

- Where no previous market making activity in a particular financial instrument can be demonstrated (e.g. IPO, intention to start a new market making business in a new financial instrument):

  1. For market making activities under Article 2(1)(k)(i) capacity: indication of expected daily volumes of market making activities in a financial instrument;

  2. For market making activities under Article 2(1)(k)(ii) capacity: indication of expected weekly volumes of market making activities in a financial instrument.

e. Notification channel

The complete, dated and signed notification of intent must be sent

by mail to: Commission de Surveillance du Secteur Financier
Department Supervision of securities markets
110, route d'Arlon L-2991 Luxembourg

or, alternatively, by e-mail to: shortselling@cssf.lu.

3. Information published by ESMA

The European Securities and Markets Authority (ESMA) publishes on its website (http://www.esma.europa.eu/page/Short-selling) further information and clarification as regards the practical application of the European legislative short selling framework. The persons concerned shall in particular take into consideration the ESMA Questions and Answers (Q&A) document on Implementation of the Regulation on short selling and certain aspects of credit default swaps (as it may be revised, when appropriate), as well as any guidelines or rules already adopted or which may be adopted in the future by ESMA in relation to the requirements under the Regulation.

According to the provisions of the Regulation, ESMA shall provide for public access to certain types of information, such as: significant net short position notification thresholds for each sovereign issuer (Article 7(2)); links to central websites operated or supervised by competent authorities where the public disclosure of net short positions is posted (Article 9(4)); the list of shares for which the principal trading venue is located in a third country (Article 16(2)) and a list of market makers and authorised primary dealers (Article 17(3)).

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[1] "If market making activities are carried out in a financial instrument, different from a share or a sovereign debt instrument, that creates long or short positions as defined in Articles 3 and 4 of the Regulation, the notification should specify the category of financial instrument according to Part 1 and 2 of Annex I of the Commission Delegated Regulation (EU) No 918/2012 and the corresponding share or issuer of the sovereign debt. Importantly, activities in the corresponding share or sovereign debt will be exempted only to the extent they are undertaken for the purpose of hedging market making activities in that financial instrument, pursuant to point (iii) of Article 2(1)(k) of the Regulation."

4. Information published by the CSSF

Apart from information disclosed and made available as described under other sections of this circular, the CSSF publishes on the Short selling page of its website http://www.cssf.lu all relevant information and documentation concerning the legislative and regulatory framework on short selling and certain aspects of credit default swaps in Luxembourg. The CSSF will also make public on said page notices of any decision to impose or renew any measure that it takes under the provisions of the Regulation, including any notification, publication and restrictions measures which may be adopted under exceptional circumstances.

ANNEX I

List of fields for notification purposes in Luxembourg

Field identifier	Description
1. Position holder	For natural persons: the first name and the last name For legal persons: full name including legal form as provided for in the register where it is incorporated, if applicable
2. Legal person identification code	Bank Identifier Code, if available
3. Address of the position holder	Full address (e.g. street, street number, postal code, city, state/province) and country
4. Contact details of the position holder	Telephone number, fax number (if available), email address
5. Reporting person	For natural persons: the first name and the last name For legal persons: full name including legal form as provided for in the register where it is incorporated, if applicable
6. Address of the reporting person	Full address (e.g. street, street number, postal code, city, state/province) and country, when different from the position holder
7. Contact details of the reporting person	Telephone number, fax number (if available), email address, when different from the position holder
8. Reporting date	Date on which the notification is submitted in accordance with ISO standard 8601:2004 (yyyy-mm-dd)
9. Issuer identification	For shares: full name of the company that has shares admitted to trading on a trading venue For sovereign debt: full name of the issuer. For uncovered sovereign credit default swaps: full name of the underlying sovereign issuer
10. ISIN	For shares only: ISIN of the main class of ordinary shares of the issuer. If there are no ordinary shares admitted to trading, the ISIN of the class of preference shares (or of the main class of preference shares admitted to trading if there are several classes of such shares).
11. Country code	Two letter code for the sovereign issuer country in accordance with ISO standard 3166-1
12. Position date	Date on which the position was created, changed or ceased to be held. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)

13. Net short position size in percentage	For shares only: percentage (rounded to 2 decimal places) of the issued share capital, expressed in absolute terms, with no "+" or "-" signs
14. Net short position equivalent amount	For shares: total number of equivalent shares For sovereign debt: equivalent nominal amount in Euros For uncovered sovereign credit default swaps: equivalent nominal amount in Euros Figures expressed in absolute terms, with no "+" or "-" signs and the currency expressed in accordance with ISO standard 4217
15. Date of the previous notification	Date on which the last position reported by the position holder in relation to the same issuer was notified. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)
16. Cancellation date	Date on which a cancellation form is submitted to cancel an erroneous notification previously submitted. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)
17. Comments	Free text – optional
18. Public disclosure requirement	For shares only: Check box. Details of the net short position shall be disclosed to the public pursuant to Article 6 of Regulation (EU) No 236/2012.

ANNEX II

Format of notification form for net short positions in Luxembourg

POSITION HOLDER	First name LAST NAME Full company name		
	BIC code (if the holder has one)		
	Country		
	Address		
	Contact person	First name Last name	
		Phone number	
		Fax number	
		E-mail address	

REPORTING PERSON (if different)	First name LAST NAME Full company name		
	Country		
	Address		
	Contact person	First name Last name	
		Phone number	
		Fax number	
		E-mail address	

NET SHORT POSITION IN RELATION TO THE ISSUED SHARE CAPITAL OF A COMPANY THAT HAS SHARES ADMITTED TO TRADING ON A TRADING VENUE	
1. Reporting date (yyyy-mm-dd)	
2. Name of the issuer	
2.1. ISIN code	
2.2. Full name	
3. Position date (yyyy-mm-dd)	
4. Net short position after threshold crossing	
4.1. Number of equivalent shares	
4.2. % of issued share capital	
5. Date of previous notification (yyyy-mm-dd)	
6. Comment	
7. Public disclosure requirement	Yes/No

NET SHORT POSITION RELATING TO ISSUED SOVEREIGN DEBT	
1. Reporting date (yyyy-mm-dd)	
2. Name of the issuer	
2.1. Country code	
2.2. Full name	
3. Position date (yyyy-mm-dd)	
4. Net short position after threshold crossing Equivalent nominal amount	
5. Date of previous notification (yyyy-mm-dd)	
6. Comment	

UNCOVERED POSITION IN A SOVEREIGN CREDIT DEFAULT SWAP	
1. Reporting date (yyyy-mm-dd)	
2. Name of the issuer	
2.1. Country code	
2.2. Full name	
3. Position date (yyyy-mm-dd)	
4. Net short position after threshold crossing Equivalent nominal amount	
5. Date of previous notification (yyyy-mm-dd)	
6. Comment	

ANNEX III

Notification of intent to make use of the exemption under Article 17(3) of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of Credit Default Swaps

1	**Details of NOTIFYING PARTY**	
a)	First name LAST NAME Full company name	
b)	BIC code (if the holder has one)	
c)	Country	
d)	Address	
2	**Contact person**	
a)	First name Last name	
b)	Phone number	
c)	Fax number	
d)	E-mail address	
3	**Financial Instrument**	
	Description of sovereign issuer(s)	

Date, signature_____

IMPORTANT:

This notification form is only valid if submitted together with a copy of the agreement/recognition signed with a sovereign issuer or a person acting on its behalf

ANNEX IV

Notification of intent to make use of the exemption under Article 17(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of Credit Default Swaps

1	**Details of NOTIFYING PARTY**	
a)	First name LAST NAME Full company name	
b)	BIC code (if the holder has one)	
c)	Country	
d)	Address	
2	**Contact person**	
a)	First name Last name	
b)	Phone number	
c)	Fax number	
d)	E-mail address	

3	**Details of Market Making**	
a)	STATUS OF THE NOTIFYING PARTY (credit institution, investment firm, third-country entity or firm as defined in Article 2(1)(1) of Directive 2004/39/EC)	
b)	MARKET MEMBERSHIP (trading venue(s) where membership exists)	
c)	DETAILED DESCRIPTION OF ACTIVITIES ACCORDING TO ARTICLE 2(1)(k) or INDICATION OF EXPECTED ACTIVITIES ACCORDING TO ARTICLE 2(1)(k)	
d)	FINANCIAL INSTRUMENT(S) (provide information in the specific spreadsheet in Annex V)	
	(i) INSTRUMENT (share, sovereign issuer of debt instrument, CDS)	

	(ii) CATEGORY OF INSTRUMENT on which market making activities are conducted, only when different from (i) (by designation of the financial instrument/ underlying)	
e)	DESCRIPTION OF CONTRACTUAL AGREEMENT (main duties and activities)	

Date, signature_____

ANNEX V

Format of the spreadsheet to use together with the form for the notification of intent to make use of exemption under Article 17(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of Credit Default Swaps

Name of the informing CA
Name of the notifying person ID code* (e.g. BIC):

*please specify what code is provided if not BIC

For shares

No	ISIN	Name of the issuer	Market Membership
1			
2			
…			

For sovereign bonds

No	Name of the sovereign issuer	Market Membership
1		
2		
…		

For sovereign CDS

No	Name of the sovereign issuer	Market Membership
1		
2		
…		

For instruments other than shares, sovereign debt instruments or sovereign CDS that create short or long position

	Category (Part 1 and 2, Annex I of Commission Delegated	Underlying financial
1		
2		
…		

ANNEX VI

Guidelines - Exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps, Ref. ESMA/2013/74

17.

CSSF CIRCULAR 12/546 (as amended by CSSF Circular 15/533)

RELATING TO THE AUTHORISATION AND ORGANISATION OF LUXEMBOURG MANAGEMENT COMPANIES SUBJECT TO CHAPTER 15 OF THE LAW OF 17 DECEMBER 2010 ON UNDERTAKINGS FOR COLLECTIVE INVESTMENT AS WELL AS INVESTMENT COMPANIES WHICH HAVE NOT DESIGNATED A MANAGEMENT COMPANY WITHIN THE MEANING OF ARTICLE 27 OF THE LAW OF 17 DECEMBER 2010 ON UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CSSF Circular 12/546 relating to the authorisation and the organisation of Luxembourg management companies subject to Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment as well as investment companies which have not designated a management company within the meaning of Article 27 of the Law of 17 December 2010 on undertakings for collective investment (as amended by CSSF Circular 15/633)

Luxembourg, 24 October 2012

To all Luxembourg management companies subject to Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment and to investment companies which have not designated a management company within the meaning of Article 27 of the Law of 17 December 2010 on undertakings for collective investment.

CSSF CIRCULAR 12/546

(as amended by CSSF Circular 15/633)

Re: Authorisation and organisation of Luxembourg management companies subject to Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment as well as investment companies which have not designated a management company within the meaning of Article 27 of the Law of 17 December 2010 on undertakings for collective investment.

Ladies and Gentlemen,

The purpose of this Circular is to replace the CSSF Circulars 03/108 and 05/185 applicable to every Luxembourg management company subject to Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment (hereafter the "2010 Law") and to every investment company which has not designated a management company within the meaning of Article 27 of the 2010 Law (hereafter "SIAG") following the amendments introduced by the 2010 Law and CSSF Regulation No. 10-4 transposing Commission Directive 2010/43/EU of 1 July 2010 (hereafter "Regulation 10-4").

It incorporates CSSF Circular 11/508 so that the conditions for obtaining and maintaining the authorisation for a management company and a SIAG will be presented within one single text.

In addition, its purpose is to provide additional clarifications on certain conditions for authorisation, more particularly in the area of the use of own funds, administrative bodies, arrangements concerning the central administration and rules of delegation.

It also applies to branches of a management company and to representative offices, as the case may be, which have been established abroad.

This Circular does not apply to management companies subject to Chapters 16, 17 and 18 of the 2010 Law.

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   4.1. The members of the board of directors and the members of every other management body, respectively, which represent the management company by virtue of the law or the instruments of incorporation (Article 102 (1) f) and 129 (5) of the 2010 Law)

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   5.1. Arrangements regarding central administration (Article 102 (1) e) of the 2010 Law)

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   5.2. Arrangements in the area of internal governance (Articles 109 and 111 of the 2010 Law)

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Appendix 1

I. Conditions for obtaining and maintaining the authorisation for a management company whose activity is limited to collective portfolio management as provided for in Article 101 (2) of the 2010 Law

1. Basic principles

Access to the activity of management company within the meaning of Chapter 15 of the 2010 Law (hereafter "management company") is subject to prior authorisation by the CSSF (Article 101 of the 2010 Law).

The same applies to the opening by a Luxembourg management company of agencies in Luxembourg, representative offices and branches abroad.

2. Shareholding (Articles 103 and 108 of the 2010 Law)

2.1. The CSSF does not grant authorisation to a management company unless it has obtained information of the identity of the shareholders or members, direct or indirect[1], natural or legal persons, who have qualifying holdings and of the amount of those holdings. The CSSF has to be satisfied that the holder of a qualifying holding does not only fulfil the conditions of good repute, but will exercise his powers in such a way that the sound and prudent management of the management company is ensured. Qualifying holding means holding in an undertaking, directly or indirectly, at least 10% of the capital or of the voting rights or having any other possibility to exercise a significant influence over the management of the undertaking in which this holding is held (Article 1 (28) of the 2010 Law).

Furthermore, it is required that the direct and indirect shareholding structure is organised in such a way that the authorities responsible for the prudential supervision of the establishment and, as the case may be, of the persons with whom the company has close links are clearly determined and that this supervision can be exercised without obstruction (Article 102 (2) of the 2010 Law).

Authorisation for the shareholding structure is subject to the condition that the shareholders or members who have taken the decision to acquire a qualified holding in a management company possess the qualities required to guarantee the sound and prudent management of the management company. The concept of sound and prudent management is considered in light of the evaluation criteria set out in Article 108 of the 2010 Law which refers to Article 18 of the Law of 5 April 1993 relating to the financial sector. The five criteria are: the professional reputation of the proposed acquirer; the professional reputation and experience of any person who will direct the business of the management company after the acquisition; the financial soundness of the proposed acquirer; compliance with prudential and supervisory requirements at group level and the risk of money laundering and terrorist financing.

Each company entering into the direct shareholding structure of a management company must, in principle, dispose of own funds at least equivalent to the amount it intends to invest in the capital of the management company, after deduction, where appropriate, of other holdings held.

In the case where the depositary bank has a direct or indirect qualifying holding in a management company, the management company must identify the conflicts of interest which could result from this holding and has to strive to avoid them in accordance with the procedures provided for in the conflicts of interest policy of the management company.

The management company is required to inform the CSSF in advance of any changes regarding the holders of a qualifying holding or permitting the exercise of a significant influence, as soon as it has knowledge thereof (Article 108 (1) of the 2010 Law).

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[1] Indirect shareholders means the ultimate shareholders and effective beneficial owners of the shareholding structure of the management company.

2.2. In order to strengthen compliance with prudential requirements and rules of conduct, the CSSF may request a "sponsorship letter" (*lettre de patronage*). The issuer of this letter undertakes, *vis-à-vis* the CSSF, that the sponsored entity complies/will comply with the prudential requirements imposed by the applicable law, particularly regarding the requirements relating to own funds. This letter may be requested:

- at the time of authorisation of the management company,
- at the time of a change of the shareholding and
- when during the lifetime of the management company, the financial soundness of the existing shareholder(s) is not ensured anymore.

3. Own funds (Article 101 (4) and 102 (1) a) and b) of the 2010 Law)

3.1. Every management company must have suitable and sufficient financial means in relation to its activity.

In this regard, at the moment of its incorporation it must have an initial capital of at least Euro 125,000, or a fully paid-up equivalent amount in another currency which is at least as high as this amount.

The CSSF does not, in principle, accept contributions in kind, such as debt contributions, either at the time of incorporation of the management company, or in the case of capital increase during its lifetime.

Every management company whose authorisation exclusively covers collective management within the meaning of Article 101 (2) of the 2010 Law must at any time be able to prove an amount of own funds at least equal to the greater of the two following amounts:

- Euro 125,000 (supplemented by an additional amount of own funds equal to 0.02% of the amount by which the value of the portfolios of the management company exceeds 250 million euros. The required total sum of initial capital and additional amount does however not exceed 10 million euros);
- one quarter of the preceding year's fixed overheads (Article 102 (1) a), third indent, with reference to Article 21 of the Directive 2006/49/EC).

Upon authorisation of the management company, the minimum amount of own funds is calculated on the basis of estimated indications of the overheads for the financial year.

"Overheads" means the costs for staff and administrative bodies as well as the operating costs.

Within the limit of the provisions of Article 102 (1) a) of the 2010 Law, a management company does not have to provide up to 50% of additional own funds calculated according to the value of the portfolios managed exceeding 250 million euros, if it benefits from a guarantee of this amount provided by a credit institution or an insurance company.

The provision of such a guarantee as well as all changes regarding the conditions of this guarantee must be notified without delay to the CSSF.

3.2. Article 102 (1) b) of the 2010 Law requires that the own funds referred to in point 3.1 above are to be kept at the permanent disposal of the management company and to be invested for its own interest. In view of the aforementioned, the CSSF requires that the legally required own funds are at the permanent disposal of the management company in order to guarantee the continuity and regularity of the activities and the services provided by a management company. It follows that the own funds can neither be used for investment in the shareholder of the management company nor for granting a loan to this shareholder.

It is however permissible for the own funds in question to be invested in liquid assets or assets easily convertible into liquid short term assets and not containing any speculative positions. Every holding by a management company in another company must be notified without delay to the CSSF. In this context, the CSSF requires that the holding is exclusively financed by the surplus own funds which the management company may have in relation to the financial resources legally required under the terms of Article 101 (4) and 102 (1) a) of the 2010 Law. Furthermore, the activity of the subsidiary must remain within the line of activities which may be exercised by the management company.

4. The bodies of the management company (Articles 102 (1) c), f) and 129 (5) of the 2010 Law)

4.1. The members of the board of directors and the members of every other management body, respectively, which represent the management company by virtue of the law or the instruments of incorporation (Article 102 (1) f) and 129 (5) of the 2010 Law).

The members of the board of directors and the permanent representative, if a legal person has been appointed as director, the members of every other management body, respectively, which represent the management company by virtue of the law or the instruments of incorporation (at least three) must be of sufficiently good repute and sufficiently experienced in relation to the type of UCITS and UCI concerned. To that end, the identity of these persons as well as every person succeeding them in office must be communicated forthwith to the CSSF for approval.

This notification must be accompanied by the following pieces of information:

- a recent curriculum vitae, signed and dated;
- a copy of the passport/identity card;
- a declaration of honour, as may be downloaded on the CSSF website (www.cssf.lu) and
- if available in the jurisdiction of the person concerned, a recent extract of the criminal record.

With regard to sufficient experience, the directors and the permanent representative, in the case where a legal person has been appointed as director, respectively, must have adequate professional experience gained through having already performed similar activities to a high level of responsibility and autonomy.

Furthermore, every member of the board of directors of the management company must dedicate the required time and attention to his duties. Consequently, he must ensure that he limits the number of other professional engagements, in particular mandates held in other companies, to the extent necessary in order to perform his tasks correctly.

Insofar as every management company must have solid governance arrangements, its shareholder or its shareholders must take this principle into account when composing the board of directors of the management company. Thus, for example, when a bank is a shareholder of a management company and when this bank assumes the function of depositary bank of one or more funds managed by the management company, it must be ensured that the board of directors of the management company is not predominantly composed of representatives of the business line "depositary bank". In addition, in the case of a SICAV having appointed a management company, it is recommended that the board of directors of the two entities is not predominantly composed of the same people.

This point 4.1. also applies to members of the supervisory board in the case where the management company has adopted a dual structure.

4.2. *Senior management (Article 102 (1) c) of the 2010 Law)*

Senior management means the persons who effectively conduct the business of the management company within the meaning of Article 102 (1) c) of the 2010 Law (hereafter the "conducting officers") irrespective of the legal structure that it has adopted. The number of conducting officers must be at least two.

The conducting officers must also fulfil the conditions as to good repute and professional experience required for the type of UCITS or UCI managed. To that end, the identity of each conducting officer as well as of every person succeeding him in office must be communicated forthwith to the CSSF for approval.

This notification must be accompanied by the following pieces of information:

- a recent curriculum vitae, signed and dated;
- a copy of the passport/identity card;
- a declaration of honour, as may be downloaded on the CSSF website (www.cssf.lu) and
- if available in the jurisdiction of the person concerned, a recent extract of the criminal record.

With regard to required experience, the conducting officers must have adequate professional experience gained through having already performed similar activities to a high level of responsibility and autonomy.

The CSSF must be able to contact the conducting officers directly. These persons must be able to provide all information that the CSSF deems essential for its supervision.

For the accomplishment of their task, the two conducting officers must, in principle, permanently reside in Luxembourg. This does not however prevent the conducting officers from having their domicile in a place permitting them, in principle, to come to Luxembourg every day.

Having regard to the nature, scale and complexity of the activities of the management company, the CSSF may nevertheless agree, through a duly supported request for derogation made in advance, that only one of the conducting officers of the management company shall permanently reside in Luxembourg.

The conducting officers form a management committee. The members of this committee work together in close partnership to take all actions falling within the scope of their responsibilities.

The management committee is among other things, responsible, under the ultimate responsibility of the board of directors, for:

- the implementation of strategies and guiding principles for central administration and internal governance referred to in point 5 below through specific written internal policies and procedures;
- the implementation of adequate internal control mechanisms (i.e. permanent compliance, permanent internal audit function and permanent risk management function);
- ensuring that the management company has the technical infrastructure and human resources necessary for performing its activity;

- for each UCITS the management company manages, the implementation of the general investment policy, as defined, as the case may be, in the prospectus, the management regulations of the fund or the instruments of incorporation of the investment company , pursuant to Article 10.2. a) of Regulation 10-4;

- supervising, pursuant to Article 10.2. b) of Regulation 10-4, the adoption of investment strategies for each UCITS that the management company manages;

- adopting, and consequently filing for regular review, pursuant to Article 10.2. f) of Regulation 10-4, the risk management policy as well as the provisions, procedures and implementing techniques of this policy, as provided for in Article 43 of Regulation 10-4, and in particular the risk limitation system for each UCITS managed, and

- the implementation and follow-up of the marketing policy and the distribution network of UCITS/UCIs managed by the management company.

In order to fulfil its responsibilities, the management committee shall work in accordance with a method of operation adapted to the activities of the management company. Thus, for example, the conducting officers shall be in regular contact with each other and hold periodic meetings. These meetings shall be formalised in written minutes, available at the offices of the management company in Luxembourg. It is important that the agenda of these periodic conducting officers' meetings includes, amongst other things, a discussion on the management information provided for in point 5.2.1.2. below.

The management committee regularly informs the board of directors, in an exhaustive manner and in writing, on the activities of the management company and the UCITS/UCIs it manages.

Each new request for approval of a management company must include a description of the method of operation of the management committee.

In the context of the operation of the management committee, each conducting officer is assigned specific areas of responsibility with regard to the functions included in the collective portfolio management activity, including risk management. This split of tasks must be organised so as to avoid conflicts of interest. Thus, the functions of risk-taking and the independent control of these same risks shall not be assigned to the same conducting officer (i.e. the performance and/or control of the risk management function and the investment management function shall not be carried out by the same conducting officer, for example).

The conducting officers are not necessarily required to be employees of the management company that they manage, provided that an agreement exists that precisely defines their rights and duties and, as the case may be, to whom they are reporting (i.e. the board of directors of the management company, any organisational unit existing at group level to which the management company belongs and with which a functional link exists, etc.).

It is also not excluded that the persons in question manage the business of several management companies, on the condition that the CSSF has proof that the exercise of multiple functions does not and is not likely to prevent the relevant persons from discharging any one particular function soundly, honestly and professionally. Thus, the conducting officers must be supported in their daily work by enough qualified staff working in Luxembourg.

This does not exclude the possibility for the conducting officers, on the basis of a service agreement, to use the expertise and/or existing technical means at the level of other organisational/operational units in existence within the group to which the management company belongs and/or at the level of a third party having the capacities, quality and authorisations required to provide the requested support in a reliable and professional way.

The principle of independence of the management company from the depositary prevents a conducting officer from being employed by the depositary of a UCITS which the management company manages.

This point 4.2. also applies to members of the management board in the case where the management company has adopted a dual structure.

5. Arrangements regarding central administration and internal governance

5.1. Arrangements regarding central administration (Article 102 (1) e) of the 2010 Law)

Every management company must have a head office in Luxembourg, consisting of a "decision-making centre" and an "administrative centre". This requirement implies that the management company cannot only have a registered or statutory office in Luxembourg.

The central administration, which comprises in a broad sense the functions of direction and management, of execution and of control, must permit the establishment to have control of all of its activities.

1. The concept of decision-making centre not only comprises the activity of conducting officers (a minimum of two) according to Article 102 (1) c) of the 2010 Law, but also, as the case may be, that of persons responsible for the different administrative and control functions or the different departments or occupations existing inside the management company.

2. The administrative centre comprises in particular sound administrative and accounting organisation which ensures, amongst others, the adequate execution of operations, the correct and complete recording of operations, the production of sound and rapidly available management information, the monitoring of delegated activities, the management of conflicts of interest and the respect of applicable rules of conduct. To that effect, the management company must have in Luxembourg the human and technical resources necessary and sufficient to exercise the activities that it wants to implement and in order to control the delegated functions. This implies that it has in place the following elements (the list of which is not exhaustive):

   i. enough own competent operating staff in order to execute the decisions taken (point 5.1.1.),

   ii. its own systems of execution, meaning procedures and technical and IT infrastructure (point 5.1.2.),

   iii. documentation relating to its operations and those undertaken by its delegates on behalf of the management company. Access to the documentation relating to the operations undertaken by its delegates may be gained either by electronic means or on simple demand, and

   iv. an accounting function (point 5.1.3.).

The concept of central administration also implies that the management company must have its own office in Luxembourg.

5.1.1. Clarifications on the operating staff of a management company referred to in point 5.1., sub-point 2. i. "administrative centre" above.

In accordance with Article 6 of Regulation 10-4, every management company must employ enough staff in Luxembourg with the skills, knowledge and expertise necessary to fulfil the tasks that it wishes to perform and in order to efficiently supervise the activities of delegates.

In principle, the staff is employed by the management company. The CSSF may grant an exemption concerning this point and can authorise that the entire or only part of the staff is either on secondment or made available by an undertaking belonging to the same group or by a non-affiliated company. In this case, the contract governing this secondment or this availability must be submitted to the CSSF for prior approval. Furthermore, the contract must stipulate rules concerning the management of conflicts of interest between the staff concerned

and the entity. The staff thus made available or on secondment must be reachable in Luxembourg during normal business hours.

The staff of a management company may in accordance with Article 6.3. of Regulation 10-4 assume multiple functions. The exercise of multiple functions does not and is not likely to prevent the relevant persons from discharging any particular one of these functions soundly, honestly and professionally.

Long term absences or resignations of staff must not prevent, at end, the good functioning of the management company.

5.1.2. Clarifications on the systems of execution of a management company referred to in point 5.1., sub-point 2. ii. "administrative centre" above.

5.1.2.1. *Every management company must have in its office a suitable technical and IT infrastructure for the activity that it wants to realise.*

Generally, the management company must organise its technical and IT infrastructure so as to safeguard, in accordance with Article 5.2. of Regulation 10-4, the security, confidentiality and integrity of information.

The requirements in the above paragraph are best met when the management company has its own IT infrastructure which is supported by its own IT department organised and surrounded by an internal control system determined by the management authority. As a general rule, the management company must have its own computers and relevant, duly documented computer programs at its premises in Luxembourg.

The abovementioned provisions do not however prevent a management company from having recourse to the services of a third party specialised in the advice, programming, maintenance or management of electronic systems. Any recourse to third party services shall be formalised in a services agreement.

Moreover, the management company must be able to function normally in the event that its electronic system is unavailable. For this purpose, it must implement a back-up solution in line with a business continuity plan as provided by Article 5.3. of Regulation 10-4. The purpose of this continuity plan is to describe the actions to be implemented by the management company in order to continue operations in the case of an incident or disaster linked to abnormal events.

It is however permissible for a management company to be linked by way of telecommunication to a data processing centre at its mother company or a subsidiary thereof. If the services of a mother company or a subsidiary of the latter are used, the management company must verify that it is qualified for and capable of providing the service in question.

In the case where the management company does not have its own IT infrastructure, it must ensure that it has rapid and unlimited access to the information concerning it, stored at the data processing centre. This information must be encrypted or otherwise protected according to other available technical means in order to ensure the security of communications and the confidentiality of client data.

5.1.2.2. *A management company must have suitable electronic systems enabling it to comply with the provisions on sound administrative organisation provided in Article 109 (1) a) of the 2010 Law. In this context, a distinction must however be made between a management company which itself exercises one or several functions included in the activity of collective portfolio management and one which has delegated one or more of these functions to one or several third parties.*

- Management company itself exercising one or several of the functions included in the activity of collective portfolio management.

i. A management company which is directly in charge of the portfolio management of one or several undertakings for collective investment, without using an external manager, must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction according to Articles 8 and 15 of Regulation 10-4.

ii. A management company which is directly in charge of the administration of undertakings for collective investment, including the maintenance of the register of the unitholders, must make the appropriate arrangements to equip itself with suitable electronic systems permitting the timely and proper recording of each subscription or redemption order in accordance with Articles 8 and 16 of Regulation 10-4.

In view of the provisions of Article 9 of Regulation 10-4, every management company also has the obligation to establish, implement and maintain accounting policies and procedures compliant to the accounting rules of the UCITS home member state. If the UCITS in question has different compartments, each compartment must be the object of separate accounting. In addition, a management company must establish appropriate procedures permitting the correct and precise identification and valuation of all the elements of the assets and liabilities of UCITS or, as the case may be, of its compartments. The principles set out above must not only be applicable to UCITS but also to all types of UCI, SIF or other undertakings for collective investment managed, as the case may be, by the management company.

Consequently, the management company must have an IT environment that allows compliance with the above accounting principles.

- Management company delegating one or several functions included in the activity of collective portfolio management.

In the case where a management company has delegated the portfolio management and/or the administration, including the maintenance of the register of unitholders, to a third party, it must monitor continuously from the start of the relationship that every delegate has suitable electronic systems in order to satisfy the requirements of Articles 8, 9, 15 and 16 of Regulation 10-4.

These controls may, for example, take the form of receiving the procedures and policies of the delegates in this area, regular confirmations in relation thereto, the ISAE 3402 reports or equivalent and on-site visits at the delegate.

Furthermore, the management company must have a suitable infrastructure permitting its operating staff to control effectively at any time the activity of the undertaking to which the mandate has been given. This requires, amongst others, that the management company performs initial and ongoing due diligence on the service provider(s) which it uses, respectively that it implements control arrangements permitting the monitoring of the activity of the administrative agent, including the registrar and transfer agent, the investment manager(s), the distributor(s) and all the risks incurred by the UCITS. Besides the general and specific conditions by virtue of which a management company may delegate one or several of the functions included in the collective management referred to in Chapter 7 "Conditions for authorisation of delegation" of this Circular, points 7.1.4. and 7.1.8. of the same chapter provide additional clarifications on the content of control procedures referred to in the preceding paragraph.

The provisions in this regard are also applicable in the case where the management company has partly delegated one or more functions included in the activity of collective management.

5.1.3. Clarifications on the accounting function referred to in point 5.1., sub-point 2. iv. "administrative centre" above

According to Article 5 (4) of Regulation 10-4, every management company must establish, implement and maintain accounting policies and procedures permitting the delivery of financial reports which reflect a true and fair view of the management company's financial situation.

Consequently, every management company must communicate to the CSSF the name of the person responsible within the management company who can provide information on the financial situation of the management company.

Regarding the organisation of the accounting function, the management company can either put in place its own accounting function, or use, under its responsibility, the expertise of a third party in the area of accounting. Every use of a third party must be notified to the CSSF in advance.

Independently of the organisation of the accounting function, the accounting records relating to the activity of the management company must always be available and/or electronically accessible at the registered office of the management company in Luxembourg to enable the management company to draw up a balance sheet and a profit and loss account in an independent way.

5.2. Arrangements in the area of internal governance (Articles 109 and 111 of the 2010 Law)

Every management company must have solid arrangements for internal governance which ensure the sound and prudent management of its activities and the risks inherent therein.

These arrangements for internal governance, which have essentially been elaborated in Regulation 10-4, must notably include the following areas:

- organisational requirements, including mechanisms for internal control;
- conflicts of interest;
- the rules of conduct;
- the remuneration policy;
- the risk management.

Every management company promotes an internal culture of control and of risk which aims to ensure that all members of staff actively take part in the detection, declaration and control of risks incurred by the establishment.

5.2.1. General requirements regarding procedures and organisation (Article 5 of Regulation 10-4)

5.2.1.1. Every management company must, in accordance with Article 5 (1) a), b) and d) of Regulation 10-4, establish a precise and clear procedures manual which describes more specifically its internal functioning, the allocation of tasks amongst its staff, hierarchical lines, and, where applicable, the procedures for exchanging information with, and controls undertaken on delegates. This procedures manual must be available at the registered office of the management company, accessible to its staff and kept up-to-date taking into account the evolution of the management company's activity.

Every new request for authorisation of a management company must include a confirmation relating to the establishment of such a manual.

5.2.1.2. According to Article 5 (1) e) of Regulation 10-4, every management company must maintain in an adequate and orderly manner records of its activities and its internal organisation.

To this end, every management company must put in place "management information" permitting the follow-up of its activity and that of its delegates.

This management information must, amongst others, cover the results of controls carried out on the activities of delegates, the analyses in the area of risk management, the incidents linked to the activity of collective management (significant and non-significant NAV errors, breaches of limits, valuation problems, problems of reconciliation, situations giving rise to conflicts of interest and to other problems), execution policy, complaints, minutes of previous meetings, etc..

As the management information must also provide information about the controls made on the delegated activities, every management company must ensure that it receives from the delegates all necessary information in order to effect an efficient control of this delegate.

Finally, it must be ensured that this management information is available in Luxembourg and preferably kept in a central database accessible at any time in Luxembourg.

5.2.1.3. According to Article 5 (2) of Regulation 10-4, every management company must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

5.2.1.4. Every management company, in accordance with Article 5 (3) of Regulation 10-4, establishes, implements and maintains an adequate business continuity policy of its activities and of its services enabling the restoration of its activities and services after a disaster and providing for regular testing of its backup facilities. It shall also verify that the service provider to which the management company has, where appropriate, delegated one or several of the functions included in the collective portfolio management activity, including risk management, has implemented an adequate business continuity plan. The abovementioned requirement also applies to partial delegation of one or several of these functions.

5.2.2. Complaints handling

Every management company must, in accordance with Article 7 of Regulation 10-4, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors. The information concerning these procedures shall be made available to investors free of charge.

The management company must designate amongst its staff one person responsible for the handling, centralisation and follow-up of complaints. The name of this person must be communicated to the CSSF. A specific mandate for the handling of complaints can be given to a specialised third party established in Luxembourg or abroad. Furthermore, the activity plan shall comprise a description of the complaints handling procedures established by the management company.

The management company must communicate to the CSSF a list of third parties authorised to handle complaints and an annual report indicating the number of complaints filed by investors, the reason for these complaints as well as the progress made in handling them.

This statement must be obtained by the CSSF at the latest one month after the ordinary general meeting that approved the annual accounts of the management company.

5.2.3. Permanent compliance and internal audit function (Articles 11 and 12 of Regulation 10-4)

In accordance with Regulation 10-4, every management company must establish and maintain operational a permanent compliance and internal audit function.

CSSF Circular 04/155 (relating to the compliance function) as well as IML Circular 98/143 (relating to internal control and internal audit) are applicable to management companies.

However, point bd)[2] of chapter VIII of CSSF Circular 04/155 does not apply to a management company whose activity only covers collective portfolio management.

The compliance and internal audit functions must also cover the activity of branches, representative offices, agencies and subsidiaries owned by a management company, where appropriate.

It should be noted that the compliance and the internal audit functions cannot be undertaken concurrently by the same physical person. Similarly, where the permanent compliance and internal audit functions have been delegated, the monitoring of these functions cannot be carried out by the same individual.

In addition, it should be remembered that pursuant to the two aforementioned Circulars the compliance and the internal audit functions shall both submit annual reports to the CSSF. These reports must be obtained by the CSSF at the latest one month after the ordinary general meeting that approved the annual accounts of the management company. Finally, the principle of proportionality as detailed under chapter IV below can be applied by a management company in the organisation of its compliance and internal audit functions. This principle however does not authorise a management company to have no compliance and internal audit function.

5.2.3.1. The compliance function

A management company must have its own compliance function in Luxembourg which shall be organised in accordance with the provisions of CSSF Circular 04/155.

The compliance function must be able to operate independently and in compliance with the separation of tasks in order to identify any risk of non-compliance of the management company with the requirements imposed by the 2010 Law, Regulation 10-4 and all other regulations applicable to management companies.

A management company whose authorisation is limited to collective management may invoke, via a specific prior derogation request based on an adequate justification, the possibility of delegating the compliance function to a third party in accordance with Article 10 (2) c) of Regulation 10-4.

However, a management company providing, in addition to collective management, one or more of the services referred to in Article 101 (3) of the 2010 Law is not authorised to delegate the compliance function. The management company must communicate to the CSSF the name of its Compliance Officer, together with his/her curriculum vitae.

The function of Compliance Officer cannot be exercised by a member of the board of directors of the management company.

It is possible for the Compliance Officer to provide legal services to the management company.

5.2.3.2. The internal audit function

A management company must have its own internal audit function in Luxembourg which shall be organised in accordance with the provisions of IML Circular 98/143.

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[2] The compliance function shall not be outsourced to third parties. This principle shall not preclude the possibility of using the expertise or technical means of third parties […] or the possibility of establishing, where appropriate, a functional link with the compliance function of the group […].

The internal audit function must operate independently and in compliance with the separation of tasks in order to identify any risk of non-compliance of the management company with the requirements imposed by the 2010 Law, Regulation 10-4 and all other regulations applicable to management companies.

In accordance with item 5.4.9. a) of IML Circular 98/143, the internal audit function may be delegated to an external expert specialised in internal audit. This external expert may be the internal auditor of the group to which the management company belongs. The name of the third party so mandated shall be communicated to the CSSF together with a description of its competences and internal organisation.

In any event, the external expert appointed must be independent from the approved statutory auditor of the management company or from the approved audit firm as well as from the group which the approved statutory auditor belongs to.

It should be remembered that, in accordance with item 5.4.9. f) of IML Circular 98/143, a management company having one or more branches is not generally authorised to use an external expert specialised in internal audit. However, the CSSF may derogate based on an adequate justification from this abovementioned general principle to the extent that the importance of the activity and the scale of the branch(es) so justify.

The management company must communicate to the CSSF the name of the person responsible for the internal audit function, together with his/her curriculum vitae and, in case of delegation of the internal audit function, the name of a person, who may or may not be part of the governing bodies, having sufficient knowledge in the area of audit to monitor the work performed by the external expert.

The function of internal auditor cannot be exercised by a member of the board of directors of the management company.

5.2.4. The permanent risk management function and the risk management process

5.2.4.1. The permanent risk management function (Article 13 of Regulation 10-4)

In accordance with Regulation 10-4, a management company must, amongst others, establish and maintain operational a permanent risk management function.

The permanent risk management function must be hierarchically and functionally independent from operating units.

However, the CSSF may allow a management company to derogate from that requirement where such derogation is appropriate and proportionate in view of the nature, scale and complexity of the management company's activities and of the UCITS it manages.

In this case, a management company must be able to demonstrate that appropriate measures of protection have been taken against conflicts of interest, in order to allow the independent performance of risk management activities, and that its risk management method meets the requirements of Article 42 of the 2010 Law.

This function is responsible for:

a) implementing the risk management policy and procedures;

b) ensuring compliance with the UCITS' risk limitation system, and notably the legal limits concerning global exposure and counterparty risk, in accordance with Articles 46, 47 and 48 of Regulation 10-4;

c) advising the board of directors as regards the definition of the risk profile of each managed UCITS;

d) providing regular reports to the board of directors and, where it exists, to the supervisory function of the management company on the items listed under Article 13 (3) d) of Regulation 10-4;

e) reporting regularly to the governing bodies of the management company on the items mentioned in Article 13 (3) e) of Regulation 10-4, and

f) reviewing and reinforcing, where appropriate, the tools and procedures for the valuation of OTC-traded derivative instruments under Article 49 of Regulation 10-4.

The objective of the permanent risk management function shall be to follow, in an integrated and centralised manner, the exposure of UCITS managed by the management company to market risks, liquidity risks, counterparty risks and the exposure of UCITS to any other risks, including operational risks, which could be significant for the UCITS.

Pursuant to Article 10 (2) d) and Article 26 (4) of Regulation 10-4, the exercise of part or all of the risk management may be delegated by contract to a specialised third party.

The contract and the name of the mandated third party(ies) together with, where applicable, a description of the expertise and internal organisation of this/these third party(ies) must be communicated to the CSSF. The fact that the management company has delegated part or all of the risk management to a specialised third party does not have any impact on the management company's responsibility for the adequacy and effectiveness of the risk management policy or on its responsibility to ensure adequate monitoring of the UCITS risks.

In light of the foregoing, every management company shall therefore, in principle, appoint from among its staff a person who shall be responsible for the permanent risk management function and who possesses the necessary qualifications, knowledge and expertise in the area. This person must perform his mandate under the direct responsibility of the conducting officer of the management company responsible for the risk management function.

By virtue of the principle of proportionality, one of the conducting officers of the management company may also be directly appointed as the person responsible for the permanent risk management function provided that he has the necessary qualifications, knowledge and expertise in the area. Without prejudice to the operational model chosen, the conducting officer responsible or directly in charge of the permanent risk management function may not, at the same time, be the conducting officer responsible for investment management, even if this function is delegated to a third party.

The permanent risk management function may not be combined with the internal audit function of the management company. By contrast, it is permissible to combine the compliance function with the permanent risk management function.

The permanent risk management function cannot be exercised by a member of the board of directors of the management company. The regular report assessing the adequacy and effectiveness of the risk management, to be established pursuant to Article 10 (4) of Regulation 10-4 by the permanent risk management function, must be submitted to the CSSF at least once a year and at the latest one month after the ordinary general meeting approving the annual accounts of the management company. This report may take the form of a consolidated report covering all the UCITS managed by the management company.

5.2.4.2. The risk management process (Article 42 (1) of the 2010 Law)

Article 42 (1) of the 2010 Law introduces the requirement for a management company to employ a risk management process which enables it to control and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio. In addition, it must employ a process for accurate and independent assessment of the value of OTC derivatives.

Articles 42 to 50 of Regulation 10-4 clarify the risk management policy and risk measurement to be put in place by a management company in order to comply with the abovementioned Article 42 (1).

Thus, Article 43 (1) of Regulation 10-4 provides, amongst others, that the risk management policy must not only cover market and counterparty risks, but also operational, liquidity and any other risk which may be significant for the UCITS managed.

Furthermore, Article 46 (2) lays down the requirement for a management company to calculate the UCITS global exposure at least once a day.

The Articles of the 2010 Law and Regulation 10-4 mentioned above are further clarified by CSSF Circular 11/512 presenting, amongst others, the main changes in the regulatory framework in the area of risk management and providing clarifications in respect of the rules covering risk management.

In this context, it is pertinent to bear in mind Chapter V of this Circular in particular, according to which every management company must communicate to the CSSF a certain amount of information in relation to the risk management policy while strictly respecting the form set out in the annex of CSSF Circular 11/512.

This information must also be provided to the CSSF at the moment of authorisation of a new management company. An update of the risk management process must be transmitted to the CSSF at least once a year at the closing date of the management company's financial year. This transmission shall be done, at the latest, one month after this closing date.

If there are significant amendments to the risk management policy (e.g. new financial products), the management company must update the risk management procedure and inform the CSSF by submitting an up-to-date version of this procedure.

Finally, it should be remembered that pursuant to Article 50 of Regulation 10-4 a management company must provide the CSSF with a report, at least once a year at the closing date of the management company's financial year, containing information giving a true picture of the types of financial derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods chosen for assessing the risks associated with financial derivative instrument transactions.

5.2.5. Personal transactions (Article 14 of Regulation 10-4)

A management company must establish written procedures regarding personal transactions. A list of all personal transactions notified to or identified by the management company shall be available at its registered office in Luxembourg.

At the moment of its authorisation, the management company must confirm that a written procedure regarding personal transactions has been put in place. This procedure may be based on the one established in this respect at the level of the group to which the management company belongs. It must be updated regularly. The CSSF reserves the right to demand a copy of this procedure at any moment.

5.2.6. Conflicts of interest (Articles 109 (1) b) and 111 d) of the 2010 Law)

Every management company must take reasonable measures so as to minimise the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS or between two clients.

Furthermore, it must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS it manages are treated fairly.

5.2.6.1. Conflicts of interest policy (Articles 18 to 22 of Regulation 10-4)

To this end, the management company must establish, implement and maintain operational an effective conflicts of interest policy. This policy must be in writing and must be appropriate in relation to the size and organisation of the management company and the nature, scale and complexity of its activity. This policy must identify in particular the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS, taking also into account the relationships with other members of the group. Likewise, the policy must include the procedures to be followed and the measures to be adopted in order to manage such conflicts of interest.

In accordance with Article 22, paragraph 1, of Regulation 10-4, the management company must maintain at its registered office and regularly update a record of the types of situation which may give rise to a conflict of interest.

In accordance with Article 22, paragraph 3 of Regulation 10-4, the management company must inform investors about the situations where the organisational or administrative arrangements made by the management company to manage conflicts of interest have not been sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the UCITS or its unitholders will be prevented. The transmission of such information must be made by any durable medium considered appropriate. In addition, the management company must indicate to investors the reasons for its decision in relation to these arrangements.

At the moment of its authorisation, the management company must confirm that the written procedures regarding conflicts of interest have been put in place. These procedures must regularly be updated so as to adapt them to the evolution of the management company's activity. The CSSF reserves the right to demand a written copy of these written procedures at any moment.

5.2.6.2. Strategy for the exercise of voting rights (Article 23 of Regulation 10-4)

The management company must, amongst others, develop an adequate and effective strategy for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, so that these rights benefit exclusively the UCITS concerned.

An investment company that has designated a management company but has not specifically mandated the management company to exercise the voting rights attached to the instruments held in its portfolio, must develop its own strategy for the exercise of voting rights.

It is also acceptable for a management company, when establishing its own strategy for exercising voting rights, to refer either to the strategies established in this regard by the group to which it belongs or to recognised international standards.

A brief description of this strategy must be made available to investors free of charge, in particular by way of a website.

At the moment of its authorisation, the management company must confirm that a suitable and efficient strategy has been put in place permitting the exercise of voting rights attached to the instruments held in the portfolios in the exclusive interest of the UCITS concerned. This strategy must regularly be updated. The CSSF reserves the right to demand a copy of this strategy at any moment.

5.2.7. Rules of conduct (Article 111 a) and b) of the 2010 Law)

Regulation 10-4 specifies the content of certain rules of conduct provided for in Article 111 of the 2010 Law.

On the basis of the details provided for in Regulation 10-4, a management company must establish procedures, arrangements and policies which ensure, amongst others:

- that it acts in the best interests of the UCITS and their unitholders;

- that it executes the investment decisions taken for account of the UCITS in accordance with the objectives, the investment strategy and the risk limitations of such UCITS;

- that it takes all reasonable measures in order to execute directly all orders itself to obtain the best possible result, respectively in order to ensure that orders placed with other entities for execution are executed to obtain the best possible result. Contracts for execution of orders concluded with third parties must take this obligation into account;

- that it executes rapidly and equitably portfolio transactions on behalf of the UCITS it manages.

At the moment of its authorisation, the management company must confirm that the procedures, arrangements and policies regarding rules of conduct are in place. These procedures, arrangements and policies must regularly be updated in order to adapt them to the evolution of the management company's activity. The CSSF reserves the right to demand a copy of these procedures, arrangements and policies at any moment.

5.2.8. Remuneration policy

So as to promote sound and effective risk management, every management company must implement a remuneration policy in conformity with CSSF Circular 10/437.

5.2.9. Obligation to verify the existence of arrangements for internal governance regarding delegates

In the case where the management company partly or wholly delegates one or several functions included in the collective management, it must verify that the delegates have taken suitable measures so as to comply with the requirements in the area of organisation, conflicts of interest and rules of conduct set out in Regulation 10-4. The abovementioned requirement also applies to partial delegation of one or several functions.

It must also effectively monitor the compliance with these requirements by the third party.

6. External audit (Article 104 of the 2010 Law)

Every management company must entrust the audit of its annual accounting documents to one or more approved statutory auditors who can prove that they have adequate professional experience.

Any change regarding the approved statutory auditors must be previously approved by the CSSF.

7. Conditions for authorisation to delegate (Article 110 (1) of the 2010 Law)

7.1. *General principles*

Every management company may be authorised to delegate to third parties, for the purpose of more efficient conduct of its activities, the power to carry out, on its behalf, one or more of its functions.

7.1.1. Regarding the activities that a management company may, in principle, delegate, the following tasks, amongst others, may be mentioned:

1. the functions included in the activity of collective portfolio management set out in annex II of the 2010 Law;

2. the risk management within the limit of point III.3. of CSSF Circular 11/512;

3. complaints handling within the limit of point 5.2.2. of this Circular;

4. the compliance function within the limit of point 5.2.3.1. of this Circular;

5. the audit function within the limit of 5.2.3.2. of this Circular and

6. the operation of the electronic system.

The monitoring of delegated activities to a third party cannot itself be delegated under any circumstances.

Any delegation of such significance that the management company would be transformed into a letterbox entity shall be considered as contravening the conditions which the management company is required to meet to obtain and maintain its authorisation.

The fact that the management company has delegated some functions to third parties does not affect the management company's liability.

7.1.2. Regarding the activities which must be assumed by a management company, the following tasks, amongst others, may be mentioned:

1. the determination of the general investment policy for each UCITS not having taken the form of a company;

2. the fixing, where applicable together with the board of directors of the UCITS having taken the form of a company, of the risk profile of each managed UCITS;

3. the interpretation of analyses of the risk management, including corrective measures which may be necessary, as the case may be;

4. the implementation and monitoring of a conflicts of interest policy;

5. the implementation and monitoring of a best execution policy;

6. in the absence of a representative price, assurance that the governing bodies of the UCITS have taken a decision relating to the determination of the probable realisation value estimated with care and in good faith and to give the governing bodies of the UCITS the necessary support for this kind of decision;

7. the decision regarding the choice of service providers to be appointed, and

8. the monitoring and control of delegated functions.

In the case where a management company delegates one or several of the functions mentioned above in point 7.1.1., the following preconditions have to be complied with:

7.1.3. The CSSF must be informed in an appropriate manner about the partial or total delegation of one or several functions. This requirement also applies to partial delegation of one or several functions. To this end, the management company must submit to the supervisory authority, for each managed UCITS, a description detailing the functions it intends to delegate, the undertakings to which they are delegated, as well as the management company's procedures to control the activities of the entities to whom the functions have been delegated. This description must contain the necessary elements enabling the CSSF to verify whether the preconditions have been effectively met.

The management company must also inform the CSSF if the delegates proceeds to a partial or total sub-delegation of its activity. The conditions linked to the sub-delegation are subject to the same requirements as those mentioned in the preceding paragraph.

7.1.4. Every use of an external service provider must be preceded by written due diligence by the management company on the provider. In the context of this requirement of diligence, the management company must, amongst others, identify the operational risks deriving from this delegation.

This due diligence must be available at the request of the CSSF.

7.1.5. A written contract must be concluded between the management company and the delegate.

7.1.6. The mandate must not prevent the effectiveness of the supervision over the management company; in particular, it must not prevent the management company from acting or the UCITS from being managed in the best interests of its investors.

In this respect, the delegation must notably be structured so as to guarantee compliance with the rules of conduct set forth in Article 111 of the 2010 Law and clarified by point 5.2.7. above and so as to ensure that this compliance can be controlled at any moment.

7.1.7. The management company and the delegate must establish, implement and maintain operational a business continuity plan permitting the re-establishment of the activity after a disaster and foreseeing a regular control of its capacities of preservation, in all cases where this appears necessary regarding the nature of the task or outsourced function.

7.1.8. Measures exist permitting the persons who conduct the business of the management company to effectively control at any time the activity of the undertaking to which the mandate was given. This requirement demands that the management company implements arrangements for control which allow the conducting officers and their staff access to the data documenting the activities performed by the delegate(s) for and on behalf of the management company and the UCITS under its management.

The control arrangements must cover the following elements the list of which is not exhaustive:

a) the monitoring of the administration agent, including the registrar and transfer agent, with the verification of the existence of a second level monitoring system as regards the calculation of the NAV, the follow-up of the delivery time of the NAV, the follow-up of transactions which were not accounted for within the usual time limits, the approval of the valuation source used for the transferable securities, financial derivative instruments and unlisted instruments and control of the fees and commissions charged to the UCITS, of a procedure to reconcile the number of shares outstanding, etc. Where a second level monitoring system does not exist at the level of the service provider(s), the management company must implement its own second level monitoring system covering at least the abovementioned elements;

b) the monitoring of the activity of the investment manager(s) with the implementation of a procedure to ensure that the assets of the UCITS managed are invested in accordance with the constitutional documents and the legal provisions in force, the monitoring of the number of pre-trade and post-trade incidents accompanied by the process for regularising incidents, to ensure that the managers respect the best execution policy, etc.;

c) the monitoring of the marketing policy with the implementation of a procedure enabling the management company to be involved in decision-making concerning new countries of registration, the reimbursements to be paid to distributors, etc.;

d) the monitoring of the exposure of the UCITS to market, liquidity, counterparty and concentration risks as well as to all other risks, including operational risks, which may be significant for the UCITS.

The conducting officers will regularly receive for all of the UCITS managed by the management company detailed reports on the results of these control arrangements.

The frequency of submission and the detail of such reports will be determined by the profile of the UCITS managed and their inherent risks.

The delegation of certain functions to third parties should not prevent the persons who conduct the business of the management company from having either electronic access to the data relating to UCITS or access upon simple request.

In the case where the delegate respects a system of internal control such as for example the ISAE 3402, it may take these elements into account in the organisation of its activity of control of the delegate. The same applies even if the third party to whom the management company delegates activities is subject to Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets and financial instruments.

In addition, the management company can take into account when implementing its control arrangements transversal or specific competences existing within the group to which it belongs.

7.1.9. In accordance with Article 110 (1) f) of the 2010 Law, the mandate must not prevent the persons who conduct the business of the management company from giving additional instructions to the undertaking to which functions have been delegated at any time or from withdrawing the mandate with immediate effect when the interests of the investors so warrants.

The drafting of the agreements must take these requirements into account and specify the details thereof.

7.1.10. The undertaking to which functions will be delegated must be qualified and capable of exercising the functions in question, according to the nature of the functions to be delegated.

In addition to the authorisations which may be required by applicable regulations, the entities to which functions are delegated must prove that they have adequate human and technical resources with regard to the delegated functions.

7.1.11. The prospectuses of the UCITS list the functions which the management company has been authorised to delegate.

7.2. *Specific conditions for the delegation of the investment management function*

In addition to general provisions elaborated under point 7.1. "General principles" above, the following specific conditions are applicable.

7.2.1. Where the delegation concerns the investment management, the mandate may only be given to undertakings authorised or registered for the purpose of portfolio management and subject to prudential supervision.

In this respect, the entities to which the investment management has been delegated must be authorised under their national law, and, where applicable, under any other law applicable to the services provided.

The entities to which investment management has been delegated must be subject in their home Member State to permanent supervision by a supervisory authority set up by law with the aim of protecting investors.

Where the mandate concerning the investment management has been given to a third-country undertaking, the co-operation between the CSSF and the supervisory authority of this country must be ensured. The CSSF will determine which are the supervisory authorities fulfilling this condition.

No mandate relating to the core function of investment management can be given to the depositary, or to any other entity whose interests may conflict with those of the management company or the unitholders.

This provision does not prohibit the delegation of the investment management function to a company belonging to the same group as the depositary. In this event, the CSSF will only authorise the delegation if it has proof that measures protecting the interests of the management company and the unitholders have been put in place.

7.2.2. The identity of the entities to which the investment management function has been delegated must be published in the prospectus of the UCITS concerned.

7.2.3. While respecting the investment policy and limits contained in the UCITS' prospectus, the entities to which the investment management function has been delegated must manage the portfolio in accordance with the investment diversification criteria periodically laid down by the management company and the board of directors of the SICAV, respectively, in the case of a UCITS taking the form of a company.

Therefore, the delegation agreement will indicate the investment policy as well as the investment restrictions applicable to the UCITS (and to each compartment, if the delegation concerns one or more compartments of a UCITS with multiple compartments), and, where applicable, the specific asset allocation criteria defined by the board of directors of the management company and the UCITS having taken the form of a company, respectively. These provisions may be included in the delegation agreement by means of a reference to provisions contained in the prospectus of the UCITS concerned, without prejudice to specific instructions, which may be given from time to time by the board of directors of the management company of the UCITS having taken the form of a company, or by the persons who conduct the business of the management company. Where one of these elements is subject to modification, the agreement must be amended in due time in order to allow the delegates to comply with the new rules as soon as they come into force.

7.2.4. In view of the obligation of diligence provided for in Article 26 of Regulation 10-4, the management company must ensure that the investment decisions taken are based on qualitative, quantitative, reliable and up-to-date research. Furthermore, it must ensure that the investment decisions are executed according to the investment objectives and strategy and the risk restrictions of the UCITS managed.

7.3. *Specific conditions for the delegation of the administration function of undertakings for collective investment*

In addition to the general provisions elaborated under point 7.1. "General principles" above, the following specific conditions are applicable:

7.3.1. A management company established in Luxembourg may be authorised to delegate the administration of a UCITS that it manages to a third party having all the necessary authorisations and a suitable organisation in order to accomplish this function.

However, different rules of delegation in the area of administration of UCITS are applicable depending on the home Member State of the UCITS.

Therefore, the following scenarios must be distinguished:

a) a Luxembourg management company and a Luxembourg UCITS

In the case where a Luxembourg management company manages a Luxembourg UCITS, it is authorised to delegate the administration of this UCITS to a service provider established in the territory of Luxembourg (i.e. bank, professional of the financial sector, management company) and having all the necessary authorisations and a suitable organisation to perform this function.

b) a Luxembourg management company and a UCITS established in a Member State other than Luxembourg

In the case where a Luxembourg management company intends to manage UCITS established in a Member State other than Luxembourg, it can entrust the administration of this UCITS to a specialised third party established either in Luxembourg or in the home Member State of this UCITS. In these cases, the third party must have all the necessary authorisations and a suitable organisation to perform this function.

In the case where the management company uses an administrative agent established in a Member State other than Luxembourg, it must verify in the context of its due diligence process that the latter has an organisation equivalent to that of a Luxembourg administrative agent.

It must be remembered that the management company, in the two abovementioned cases, must ensure that the third party in charge of the administration employs accounting procedures and policies (i.e. application of the accounting rules of the home country of the UCITS, separate accounting for UCITS with multiple compartments, means permitting the identification and evaluation of the assets and liabilities of the UCITS) such as referred to in Article 9 of Regulation 10-4.

7.3.2. The management company must designate from amongst its staff a "responsible person for the accounting administration of UCITS". The name of this person must be communicated to the CSSF. This function may be combined with other functions.

7.3.3. The CSSF must be informed in advance of every sub-delegation that the third party undertakes, as the case may be, in the area of administration of UCITS.

8. Programme of activities (Article 102 (1) of the 2010 Law)

The request for authorisation of a management company includes a programme of activity which notably provides a description of the business development plan. The business development plan consists of information covering:

a) the scope of the proposed services for the next three financial years concerning:

- collective management (number of UCITS managed directly and under delegation, the law according to which the UCITS concerned have been set up, their net assets as well as the number and the net assets of the UCITS, managed directly and under delegation, created on the initiative of a company not belonging to the same group as the management company);

b) the investment policies pursued by the UCITS managed, as well as the instruments and financial markets concerned;

c) the risk management process in accordance with the format set out in the annex of CSSF Circular 11/512 (Article 42 (1) of the 2010 Law);

d) the provisional accounts (profit and loss account and balance sheet) for three financial years as well as the development strategy for the management company.

II. Conditions for obtaining and maintaining the authorisation of management companies which carry out activities of collective management and management of portfolios of investments on a client-by-client basis as referred to in Article 101 (3) of the 2010 Law

All the conditions set forth under Chapter I above remain applicable. Additional requirements apply that are specific to the activity of the management of portfolios of investments on a client-by-client basis.

Thus, the programme of activity as set forth under Chapter I.8 contains, *inter alia*, information concerning the scope of services proposed for each of the next three financial years as regards:

- the management on a client-by-client basis of portfolios of investments (number of private clients, institutionals and pension funds, as well as assets managed according to the type of client, the instruments and financial markets concerned);
- the indication of the banks where the assets of the clients are deposited;
- the risk management policy applied with regard to discretionary management and
- the proposed ancillary services, where applicable.

The CSSF would like to clarifiy that certain provisions in the MiFID Directive 2009/49/EC as well as its implementing Directive 2006/73/EC are applicable to management companies providing the services of discretionary management. Accordingly, Articles 1-1, 37-1 and 37-3 of the Law of 5 April 1993 on the financial sector as well as Article 1 of the Grand-Ducal Regulation of 13 July 2007 on the organisational requirements and the rules of conduct in the financial sector are applicable *mutatis mutandis* to the provision by a management company of discretionary management services. In this context, the management company must provide confirmation, at the moment of its authorisation, that it completely adheres to the abovementioned MiFID provisions.

It should be noted that, insofar as the services provided by the management company referred to in this Chapter are the same for the management on a client-by-client basis as those provided by the private portfolio managers falling within the scope of Article 24-3 of the Law of 5 April 1993 on the financial sector, the same prudential rules are applicable. As a result, two of the conducting officers of the management company must permanently reside in Luxembourg.

The management company must also submit to the CSSF standard contracts of discretionary management/investment advice that it intends to have signed by its clients.

Every management company that provides investment portfolio management services, including those held by pension funds on a discretionary, client-by-client basis, in the context of a mandate given by the investors, must also comply, besides point I.3. "Own funds" of this Circular, with the provisions of CSSF Circular 07/290 on the definition of capital ratios pursuant to Article 56 of the Law of 5 April 1993 on the financial sector.

Finally, every management company whose authorisation covers the services set out in Article 101 (3) of the 2010 Law and thus ensuring discretionary management, must participate for these services in an investor compensation system set up in Luxembourg and recognised by the CSSF. It is therefore obliged to join the AGDL (*Association pour la Garantie des Dépôts Luxembourg*). A copy of the confirmation of this membership must be submitted without delay to the CSSF after the authorisation of the management company.

III. The management company and the principle of freedom of establishment and freedom to provide services, respectively (Articles 113, 114, 115, 116 and 117 of the 2010 Law)

1. Freedom to establish a branch

Every management company wishing to exercise activities or to provide services within the territory of another Member State by way of a branch must submit to the CSSF a notification concerning the information mentioned in Article 114 of the 2010 Law.

This notification must be accompanied by the following pieces of information:

a) the Member State in which the management company plans to establish a branch;

b) a programme of operations setting out the activities and services envisaged within the meaning of Article 101, paragraphs (2) and (3) as well as the organisational structure of the branch, which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements regarding complaints handling as well as the provision of information, at the request of the public or the competent authorities of the home Member State of the UCITS;

c) the address, in the management company's host Member State from which documents may be obtained, and

d) the name of the conducting officer(s) responsible for the branch.

The notification file must be established in a language mutually acceptable by the CSSF and the competent authority of the host Member State.

The description of the management process mentioned in point b) above must be appropriate and proportionate to the activity and/or services actually provided at the level of the branch in the host country. It covers, if applicable, the services set out in Article 101 (3) of the 2010 Law, in this case mandates given by investors on a client-by-client basis.

Concerning the conducting officer(s) of a branch, every management company must add to the notification the following pieces of information:

- a recent curriculum vitae, signed and dated;
- a copy of the passport/identity card;
- a declaration of honour, as may be downloaded on the CSSF website (www.cssf.lu) and
- if available in the jurisdiction of the person concerned, a recent extract of the criminal record.

The management company appoints, from within its conducting officers, a person responsible for monitoring the activities of the branch whose name shall be communicated to the CSSF at the time of the notification. This person is responsible for coordinating the exchange of information between the branch(es) and the registered office of the management company in Luxembourg.

The statutory approved auditor includes the branches when auditing the annual accounts of the management company.

2. Freedom to provide services

Every management company wishing to pursue activities or provide services within the territory of another Member State under the freedom to provide services must submit to the CSSF a notification containing the information mentioned in Article 115 of the 2010 Law.

This notification must be accompanied by the following pieces of information:

a) the Member State in which the management company intends to operate;

b) a programme of operations stating the activities and services envisaged as referred to in Article 101, paragraphs (2) and (3), which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements regarding complaints handling as well as the provision of information, at the request of the public or the competent authorities of the home Member State of the UCITS.

The notification file must be established in a language mutually acceptable by the CSSF and the competent authority of the host Member State.

The description of the management process mentioned in point b) above must be appropriate and proportionate to the activity and/or services actually provided under the freedom to provide services. It covers, if applicable, the services provided for in Article 101 (3) of the 2010 Law, in this case the mandates given by investors on a client-by-client basis.

The management company must also provide a description of the main marketing techniques which it intends to use (regular trips to the host Member State, distance selling, etc.).

It should be clarified that under the terms of Article 113 of the 2010 Law, a management company which intends to provide only the distribution of units of the UCITS it manages in a Member State other than the UCITS' home Member State, without creating a branch, is therefore not subject to the provisions concerning the freedom to provide services.

3. General provisions in relation to freedom of establishment and freedom to provide services respectively

Where a management company wants to manage a UCITS of a Member State on a cross-border basis via the creation of a branch or via the freedom to provide services, it must provide the competent authorities of the UCITS' home Member State with the written agreement concluded with the depositary and with information relating to the modalities of delegation operated by the management company in relation to the functions referred to in Annex II of the 2010 Law as regards administration and investment management.

In addition, a management company which has established a branch or which acts on the basis of freedom to provide services in another Member State must notify any amendment to the information referred to under points b), c) and d) listed under 1. "Freedom to establish a branch" and 2. "Freedom to provide services" above to the competent authority of its host country as well as to the CSSF in writing at least one month prior to the entry into force of the change (Articles 114 (7) and 115 (4), respectively, of the 2010 Law).

IV. Principle of proportionality

The principle of proportionality may be invoked by a management company in the application of certain requirements set forth in Regulation 10-4 taking into account the nature, scale and complexity of its activities.

On this basis, a management company may be authorised to apply, subject to a prior and duly motivated application, the principle of proportionality in the organisation of its compliance (point 5.2.3.1.), internal audit (point 5.2.3.2.) and risk management (point 5.2.4.) functions. Under no circumstances may the principle of proportionality be invoked so as not to implement the abovementioned functions.

Furthermore, every management company may in the application of points 5.2.1. "*General requirements* regarding *procedures and organisation*", 5.1.1. "*Clarifications on the operating staff of a management company*" and 5.2.6.1. "*Conflicts of interest policy*" take into account the nature, scale and complexity of its activity, as well as the nature and range of services and activities undertaken.

In order to assess the principle of proportionality, the number of UCITS and UCIs managed by the management company, the total assets under management, the use of asset classes

considered more risky, the extent of delegated functions, the possibility for the management company to benefit from specific intra-group expertise etc. are taken into consideration.

V. A SIAG within the meaning of Article 27 of the 2010 Law

Access to the activity of a SIAG within the meaning of Article 27 of the 2010 Law is subject to prior authorisation by the CSSF.

The conditions for obtaining and maintaining this authorisation are specified in this chapter. In this regard, it should be mentioned, in particular, that a SIAG is obliged:

- to have a capital of Euro 300,000 at the date of its authorisation,
- to submit at the moment of its authorisation a plan of operations (Articles 27 (1)),
- to appoint at least two conducting officers (Article 27 (1)),
- to respect a certain number of conditions concerning delegation (Article 27 (2)),
- to act in accordance with the rules of conduct provided for in the 2010 Law (Article 27 (2)),
- to equip itself with procedures to ensure the handling of investors' complaints (Article 27 (2)),
- to have a sound accounting and administrative organisation (Article 27 (3)) and
- to implement a policy on management and measurement of risks (Article 42 (1)).

It follows from the abovementioned Articles that a SIAG must respect the majority of requirements in the area of organisation, rules of conduct, conflicts of interest and risk management which are also applicable to management companies.

As a result, every SIAG must not only have its registered office in Luxembourg but also its decision-making centre and its administrative centre as defined under point 5.1. "Arrangements regarding central administration" above.

A SIAG may delegate the administration of its portfolio(s) to a service provider established in Luxembourg (i.e. bank, professional of the financial sector, management company) having all the necessary authorisations and a suitable organisation in order to accomplish this function.

The provisions of Chapter I, points: 1 (basic principles), 2.2. ("sponsorship letter" (*lettre de patronage*)), 4. (board of directors / governing bodies), 6. (external audit), 5.2.2. (complaints handling), 5.2.4. (permanent risk management function and risk management process), 5.2.6. (conflicts of interest), 5.2.7. (rules of conduct), 5.2.8. (remuneration policy), 7. (delegation, with the exception of point 7.3.), 8. (programme of activities) and Chapter VII (prudential supervision) and VIII (final provisions) of this Circular are applicable *mutatis mutandis* to SIAGs.

On the basis of a duly motivated request, a SIAG may invoke the principle of proportionality with regard to the organisation of its permanent risk management function (Chapter I, point 5.2.4.1.). Under no circumstances may the principle of proportionality be invoked so as not to implement the function mentioned above. Finally, it should be mentioned that the provisions of Chapter III regarding the freedom to provide services, respectively the freedom of establishment, are not applicable to a SIAG.

VI. (…)[3]

VII. Prudential supervision of a self-managed investment company in transferable securities (SIAG)

Articles 27 and 39 of the 2010 Law require a SIAG to comply with the provisions applicable as regards prudential supervision. Every SIAG is invited to submit specific financial information to the CSSF, which must be drawn up on a quarterly basis. This financial information will be used by the CSSF for the purpose of the prudential supervision of a SIAG.

The schedules for the financial information to be periodically submitted to the CSSF are set out in appendix 1, 2 and 3. The information in question concerns the "Financial situation of the SIAG" (Table SIAG 1A), the "Profit and loss account" (Table SIAG 1B) and the "Number of staff" (Table SIAG Staff).

The tables must be drawn up on a quarterly basis. The reporting dates are the last day of each calendar-quarter, i.e. 31 March, 30 June, 30 September and 31 December; the tables in question must be received by the CSSF before the 20th of the month following the reference date.

The final tables must be communicated to the CSSF one month after the ordinary general meeting that approved the annual accounts.

VIII. Final provisions

1. Repealing provision

This Circular repeals CSSF Circulars 03/108, CSSF Circular 05/185 and CSSF Circular 11/508.

2. Entry into force

This Circular enters into force with immediate effect.

3. Transitional provisions

Every management company existing at the moment of entry into force of this Circular has until 30 June 2013 to comply with the provisions relating to the use of own funds (Chapter I, point 3.), to management bodies (Chapter I, point 4.), to the provisions relating to central administration (Chapter I, point 5.1.) as well as to the rules of delegation (Chapter I, point 7.).

Also, every SIAG existing at the moment of the entry into force of this Circular has until 30 June 2013 to comply with the provisions relating to the management bodies (Chapter I, point 4.) as well as to the rules of delegation (Chapter I, point 7.). Furthermore, it must take the necessary measures to implement a decision-making centre and an administrative centre in Luxembourg as defined under point 5.1. of this Circular.

[3] Chapter repealed by CSSF Circular 15/633

Appendix 1

Table SIAG 1A **FINANCIAL SITUATION AS AT …**

(Expressed in the currency of the capital)

Company:

Status: ☐ SICAV ☐ Other

Responsible person:

Frequency: quarterly

ASSETS	AMOUNT
1. Formation expenses	
2. Fixed assets	
2.1 Intangible fixed assets	
2.2 Tangible fixed assets	
2.3 Financial fixed assets	
3. Current assets	
3.1 Portfolio Securities	
3.1.1 Shares and other transferable securities with variable income	
3.1.1.1 Shares excluding units of UCIs	
3.1.1.2 Shares listed or traded on another regulated market	
3.1.1.3 Unlisted shares	
3.1.1.4 Other holdings	
3.1.1.5 Units of UCIs	
3.1.2 Bonds and other debt instruments	
3.1.2.1 Short-term securities (initial maturity: one year or more)	
3.1.2.2 Medium-/long-term securities (initial maturity: more than one year)	
3.1.3 Money market instruments	
3.1.4 Warrants and other rights	
4. Financial instruments	
4.1 Options	
4.1.1 Call option	
4.1.2 Put option	
4.2 Futures	
4.3 Other	
5. Liquid assets	
6. Other assets	
	Overall total (1+2+3+4+5+6)

LIABILITIES	AMOUNT
1. Capital and reserves	

2. Loans
3. Provisions for risks and expenses
    3.1. Provision for pensions and similar obligations
    3.2. Provisions for taxation
    3.3. Other provisions
4. Debts
5. Profits of the financial year

Overall total (1+2+3+4+5)

Appendix 2

Table SIAG 1B **PROFIT AND LOSS ACCOUNT…**

(Expressed in the currency of the capital)

Company:

Status: ☐ SICAV ☐ Other

Responsible person:

Frequency: quarterly

AMOUNT

Total income

1. Dividend
2. Interest on bonds and other debt securities
3. Bank interest
4. Other income
   a) Commissions received
   b) Other

Total costs

1. Commissions
   a) Advice and management commissions
   b) Depositary bank commission
   c) Other commissions
2. Administrative expenses
   a) Central administration expenses
   b) Audit expenses
   c) Other administrative expenses
3. Tax
   a) Subscription tax
   b) Other taxes
4. Interest paid
5. Other costs

Net investments profit

6. Net realised gains and losses
7. Variation in non realised gains and losses

Operating profit

Appendix 3

Table Staff SIAG

NUMBER OF STAFF AS AT	00/01/00
Company:	*0*
Responsible person:	*0*

	Male		Female		Total	
	Luxembourgish**	Foreign**	Luxembourgish**	Foreign**	Luxembourgish**	Foreign**
Conducting officers*					*0*	*0*
Employees					*0*	*0*
Workers					*0*	*0*
Total	*0*	*0*	*0*	*0*	*0*	*0*
Part-time staff					*0*	*0*

	Total
Total number of staff of the self-managed investment company	*0*
Including persons on secondment or made available by a company having its registered office in Luxembourg	

* According to Article **27 (1), second indent**[1] of the Law of 17 December 2010 on undertakings for collective investment, the activity of a SIAG must always be conducted by two conducting officers.

** This is to provide information on people according to their nationality: Luxembourgish or foreign.

[1] The French version refers to article 102 (1) b) of the 2010 Law (applying to management company).

18.

CSSF CIRCULAR 12/540

RELATING TO THE NON-LAUNCHED COMPARTMENTS, COMPARTMENTS AWAITING REACTIVATION AND COMPARTMENTS IN LIQUIDATION

CSSF Circular 12/540 relating to the non-launched compartments, compartments awaiting reactivation and compartments in liquidation

Luxembourg, 9 July 2012

To all Luxembourg undertakings for collective investment

CSSF CIRCULAR 12/540

Re: Non-launched compartments, compartments awaiting reactivation and compartments in liquidation

Ladies and Gentlemen,

This Circular concerns undertakings for collective investment ("UCIs") subject to the Law of 17 December 2010 on undertakings for collective investment or the Law of 13 February 2007 on specialised investment funds. Its purpose is to provide clarification regarding, on one hand, the compartments of UCIs that have been approved by the CSSF but which have not yet been launched following their approval and which have become inactive after their launch or which are in liquidation and, on the other hand, the information to be transmitted to the CSSF in this regard.

Please note that the information refers only to compartments of UCIs and not to classes of units within the compartments.

1. Scope

1.1. Compartment not launched since its approval ("non-launched compartment")

A compartment is considered as non-launched since its approval by the CSSF if that approval is not promptly followed by an issue of its units. If the compartment appears in the current prospectus/offering document of the UCI concerned, it may remain therein, subject to the conditions under point 2 below.

1.2. Compartment launched but having become inactive (compartment "awaiting reactivation")

A compartment launched and functioning may become inactive following the full redemption of its units by the UCI if the compartment is not followed by a prompt reactivation and new subscriptions and issues of units. It is thus kept without assets (cash and securities) and may remain in the prospectus/offering document of the UCI concerned, subject to the condition under point 2 below.

1.3. Closed compartments/compartments in liquidation

If the board of directors of an investment company or a management company decides to liquidate a compartment of a UCI, the compartment must be removed from the prospectus/offering document of the UCI concerned at its next update, which must take place at the latest 6 months following the date of the decision of the liquidation. It is specified that the decision of a board of directors of an investment company or of a management company to close a compartment by realising and distributing all the assets to investors is to be considered as a liquidation and the procedure mentioned above has to apply.

2. Clarification on the period of existence of "non-launched" compartments and compartments "awaiting reactivation"

The CSSF wishes to clarify that a "non-launched" compartment or a compartment "awaiting reactivation" will have **eighteen months** (i) starting from the date of the CSSF's approval letter of the relevant compartment to be launched, or (ii) starting from the date on which it became inactive to be reactivated.

The compartments existing and "non-launched" or "awaiting reactivation" at the date of the publication of this Circular will also have **eighteen months** from the date of publication either to activate or reactivate the compartment, as appropriate.

The CSSF distinguishes between two situations where, at the end of that period of eighteen months (the "**Due Date**"), a "non-launched" compartment has not been launched or a compartment "awaiting reactivation" has not been reactivated:

a. If the compartment is not contained in the current prospectus/offering document of the UCI concerned, the CSSF will consider the proposed launching of this compartment as abandoned.

b. If the compartment is contained in the current prospectus/offering document of the UCI concerned, it must be removed from this prospectus/offering document at its next update (the update must take place no later than 6 months following the Due Date) and the marketing documents must be adapted.

3. Information to be transmitted to the CSSF ("unique reporting")

In order to allow the CSSF to be in possession of current information on the approved compartments of a UCI, UCIs are required to complete the form published for this purpose on the website of the CSSF indicating (all) the compartment(s) approved but non-launched and the compartment(s) awaiting reactivation and the compartment(s) still contained in the prospectus/offering document but whose liquidation/closure has been decided or which have been closed. UCIs which do not have compartments which are "non-launched", "awaiting reactivation" or in liquidation are required to indicate this on the same form.

The form to be used for this purpose may be downloaded from the following address: http://www.cssf.lu/fileadmin/files/Formulaires/compartimentsinactifs.xls. The form must be transmitted by e-mail to the e-mail address comp@cssf.lu or via one of the electronic channels authorised by the CSSF.

This unique reporting form must be submitted to the CSSF by **Monday, 15 October 2012** at the latest and must refer to the **situation at the end of the month of September 2012**.

Moreover, it should be noted that this unique reporting must be transmitted in addition to the communication of the financial information regarding the approved and activated compartments which must be provided pursuant to IML Circular 97/136 "Financial information for the IML and Statec" and CSSF Circular 07/310 "Financial information to be provided by specialised investment funds", as amended by CSSF Circular 08/348.

For any question regarding this Circular please contact Mr Nico Barthels (telephone: 26 25 12 49, e-mail: nico.barthels@cssf.lu).

19.

CSSF CIRCULAR 11/512

RELATING TO THE PRESENTATION OF THE MAIN REGULATORY CHANGES IN RISK MANAGEMENT FOLLOWING THE PUBLICATION OF CSSF REGULATION 10-4 AND ESMA CLARIFICATIONS; FURTHER CLARIFICATIONS FROM THE CSSF ON RISK MANAGEMENT RULES; DEFINITION OF THE CONTENT AND FORMAT OF THE RISK MANAGEMENT PROCESS TO BE COMMUNICATED TO THE CSSF

CSSF Circular 11/512 relating to the presentation of the main regulatory changes in risk management following the publication of CSSF Regulation 10-4 and ESMA clarifications; further clarifications from the CSSF on risk management rules; definition of the content and format of the risk management process to be communicated to the CSSF

Luxembourg, 30 May 2011

To all Luxembourg management companies within the meaning of Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment, SIAG within the meaning of Article 27 of the Law of 17 December 2010 on undertakings for collective investment, as well as Luxembourg UCITS.

CSSF CIRCULAR 11/512

Re: - **Presentation of the main regulatory changes in risk management following the publication of CSSF Regulation 10-4 and ESMA clarifications;**

- **Further clarifications from the CSSF on risk management rules;**

- **Definition of the content and format of the risk management process to be communicated to the CSSF.**

Ladies and Gentlemen,

This Circular aims to present the main changes which were made to the regulatory framework with respect to risk management following the publication of CSSF Regulation 10-4 and the issue by the European Securities and Markets Authority (hereafter "ESMA") of several documents on risk management, and to provide clarifications on the risk management rules which are set out in these documents. Its objective is to define the content and the format of the risk management process to be communicated to the *Commission de Surveillance du Secteur Financier* (Commission for the Supervision of the Financial Sector) (hereafter the "CSSF").

I. Context

The Law of 17 December 2010 on undertakings for collective investment (hereafter the "2010 Law") as well as CSSF Regulations 10-4 and 10-5 on the implementing measures related thereto (all published in the *Mémorial* A – No. 239 of 24 December 2010) were brought to your attention by CSSF Circular 11/498. Please be reminded that this circular aims to summarise the structure of the 2010 Law, the main innovations introduced by Directive 2009/65/EC and the 2010 Law, as well as transitional provisions of the 2010 Law. It also draws your attention to the ESMA Guidelines relating to Directive 2009/65/EC.

In respect of risk management, CSSF Regulation 10-4 (hereafter the "CSSF Regulation") and the following publications of ESMA[1] provide the framework for the provisions of the 2010 Law:

[1] Available on the website of ESMA, http://www.esma.europa.eu.

- the document entitled "CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (ref.: CESR/10-788)" dated 28 July 2010 (hereafter "ESMA Guidelines 10-788");

- the document entitled "Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS (ref.: ESMA/2011/112)" dated 14 April 2011 (hereafter "ESMA Guidelines 2011/112");

- the document entitled "Risk management principles for UCITS (ref.: CESR/09-178)" dated February 2009 (hereafter "ESMA risk management principles 09-178").

As mentioned in its first Article, the CSSF Regulation lays down the implementing measures of the 2010 Law on the risk management process referred to in Article 42, paragraph (1) of this law, and in particular on the criteria for assessing the adequacy of the risk management process employed by the management company and the investment company that has not designated a management company respectively, as well as the risk management policy and the processes relating to this policy and the arrangements, processes and techniques for risk measurement and management relating to such criteria.

As to the ESMA publications, they accompany and clarify the provisions of the CSSF Regulation in respect of risk management as well as the calculation of global exposure and counterparty risk for UCITS.

II. Scope

Given the possibility for a management company responsible for the management of UCITS in accordance with Directive 2009/65/EC, to carry out collective portfolio management activities on a cross-border basis, the provisions of this Circular have to be applied taking into account the provisions of Title D "The right of establishment and the freedom to provide services" of Chapter 15 of the 2010 Law, in particular Articles 116 and 122.

These articles clarify in particular in which cases the rules of the home or host Member State are applicable, at the level of the management company or the UCITS.

Taking into account the above provisions, the Luxembourg legislative and regulatory requirements can be stated as follows:

- the organisational requirements (especially delegation arrangements, risk management processes, prudential and supervisory rules, the procedures referred to in Article 109 and the management company's notification requirements) provided for by Luxembourg law and regulations are applicable to management companies governed by Luxembourg law subject to Chapter 15 of the 2010 Law (hereafter "management companies"), for all the UCITS managed by them (whether subject to Luxembourg law or the law of another Member State, whether in the form of a common fund (*fonds commun de placement*) or an investment company) as well as to investment companies that have not designated a management company in accordance with Article 27 of the 2010 Law (hereafter "SIAG");

- requirements linked to the incorporation and operation of UCITS provided for by Luxembourg law and regulations of which (amongst others), the rules applicable to the investment policies and restrictions (in particular the calculation of global exposure and leverage effect) as well as disclosure and reporting obligations of UCITS (in particular concerning the prospectus, the key investor information and the periodic reports) only apply to UCITS governed by Luxembourg law, *i.e.* Luxembourg UCITS in the form of a common fund or an investment company managed by Luxembourg management companies or by management companies from another Member State, as well as Luxembourg UCITS in the form of a SIAG respectively.

In this context, the provisions of this Circular apply:

- on the one hand to management companies managing UCITS and to SIAG (in the latter case, the term "management company" extends to the term "investment company") regarding organisational requirements and in particular regarding risk management processes; and

- on the other hand to Luxembourg UCITS governed by Part I of the 2010 Law for the rules of incorporation and operation of UCITS.

Accordingly, all requirements in respect of risk management processes, as set out in this Circular, apply both to management companies within the meaning of Chapter 15 of the 2010 Law and to SIAG within the meaning of Article 27 of the 2010 Law.

III. Presentation of the main changes of the regulatory framework regarding risk management following the publication of the CSSF Regulation and the ESMA clarifications

III.1 Risk management policy, risk coverage and risk measurement

III.1.1 Risk management policy

Under Articles 10, 13 and 43 of the CSSF Regulation, the senior management of management companies shall, in particular, adopt a risk management policy which shall be implemented by a permanent risk management function. It shall be documented and adequate and shall identify, measure, manage, control and report on the risks to which the UCITS they manage are or might be exposed.

Under Article 43 of the CSSF Regulation, the risk management policy of management companies shall address at least the techniques, tools and arrangements that enable them to comply with the obligations set out in Articles 45 and 46 of the CSSF Regulation (covering the measurement and management of risk on the one hand, and the calculation of global exposure, on the other hand), and the allocation of responsibilities for risk management within the management company. The nature, scale and complexity of the activities of management companies and the UCITS they manage shall be considered within this context.

This risk management policy shall be drafted, ideally in the form of a separate document. However, in applying the principle of proportionality, it can also be documented in the form of a manual on the basis of existing rules and procedures. In this case, this manual shall enable the easy identification of the roles, responsibilities and risk management processes.

The CSSF would like to remind you that the implementation of this policy and related processes shall be entrusted to a permanent risk management function which shall be independent, from a hierarchical and functional point of view, of operational units or, where it is neither appropriate nor proportionate to have an independent permanent risk management function, management companies must nevertheless be able to demonstrate that appropriate safeguards have been taken against conflicts of interest to allow the independent exercise of risk management activities.

The independence of the permanent risk management function shall not, however, prevent the risk management activities from being closely associated with the investment process. Management companies shall ensure the regular communication between the permanent risk management function and the portfolio managers in order to enable the efficient conduct of risk management activities.

Management companies shall conduct a periodic review of the adequacy and effectiveness of the risk management policy and the compliance therewith. In case of deficiencies, the appropriate remedial action shall be taken (Article 44 of the CSSF Regulation). The permanent risk management function shall report regularly to the board of directors, the supervisory function (if it exists) and to the senior management on the adequacy and effectiveness of the

risk management process, indicating particularly whether the appropriate remedial actions were taken in case of deficiencies.

III.1.2 Risk coverage

The risk management policy shall permit evaluation of market risks (including global exposure), liquidity, counterparty as well as all other risks (including operational risk) which may be significant for UCITS, considering the investment objectives and strategies, the styles or methods of management (*e.g.* management based on an algorithm) adopted for managing the UCITS and the processes of assessment, and which may thus directly affect the interests of the unitholders of the managed UCITS.

III.1.3 Risk measurement

Risk measurement techniques, which shall be appropriately documented, shall include both quantitative measures covering quantifiable risks and qualitative methods. They shall also allow an adequate assessment of the concentration and interaction of risks at the level of the portfolio of the managed UCITS.

Where a quantitative risk measurement is not possible or produces unreliable results, management companies shall, where appropriate, supplement the results by integrating other pertinent elements in order to obtain a complete valuation and assessment of the risks incurred by UCITS.

For the purposes of risk measurement, management companies shall particularly rely on sound and reliable data and manage the risks associated with the use of risk measurement techniques and models (model risk). In keeping with the requirements of the use of VaR for global exposure, they shall also carry out tests, after the development of such models and thereafter continuously, to verify their robustness and reliability. Back testing to assess the quality of model predictions provides a method of assessing and monitoring the quality of the models.

Finally, management companies shall, where appropriate, conduct periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might have an adverse impact upon the managed UCITS.

III.1.4 Liquidity risk

Regarding more specifically liquidity risk, management companies shall, in accordance with Article 45 (3) and (4) of the CSSF Regulation, employ an appropriate liquidity risk management process, supported, where appropriate, by a programme of stress tests, in order to ensure that all UCITS they manage are able to comply at any time with the repurchase obligation laid down by the 2010 Law. To this end, management companies shall ensure in particular that the liquidity profile of the investments of the UCITS is in conformity with the redemption policy mentioned in the fund regulation, the instruments of incorporation or the prospectus.

III.2 Risk profile and limits system

Article 13 (3) (c) of the CSSF Regulation requires that the permanent risk management function advises the board of directors on the definition of the risk profile of each managed UCITS. Thus, for each managed UCITS, a risk profile resulting from a process of risk identification which takes into account all risks that may be material for the managed UCITS, shall be defined and approved by the board of directors of the management company.

The process of risk identification shall not be a static exercise, but shall be reviewed periodically to take into account changes in market conditions or the investment strategy of the UCITS.

Moreover, management companies shall (in accordance with Article 45 (2) (d) of the CSSF Regulation, and as further clarified in respect of the VaR by point 2 of Box 10 of ESMA Guidelines 10-788) establish, implement and maintain a documented system of internal limits regarding the risks which may be material for the UCITS they manage, while ensuring the compliance of this system of internal limits with the risk profile of each UCITS.

The legal limits on global exposure and counterparty risk shall be taken into account in the UCITS' risk limit system, as mentioned in Article 13 (3) (b) of the CSSF Regulation.

Consistency between the current levels of risk incurred by each managed UCITS and the risk profile of the UCITS shall be monitored and controlled by the permanent risk management function which shall provide reports to the board of directors, the supervisory function (if it exists) and senior management, notably in accordance with Article 13 (3) of the CSSF Regulation.

Management companies shall put in place appropriate procedures so as to take rapid remedial action, in the best interests of unitholders, in case of breaches of the limits (effective or foreseeable).

III.3 Delegation of risk management activities

Management companies may, in accordance with Article 10 (2) (d) of the CSSF Regulation, specified by Section II.7 of CSSF Circular 11/508 and Article 26 (4) of the same regulation, contractually delegate the risk management activity (entirely or a part thereof) to specialist third parties. In this case, they shall show the required due skill, care and diligence when entering into, managing and terminating any such arrangements.

In particular, before entering into such arrangements, management companies shall take the necessary measures in order to verify that the third parties have the necessary competence and capacity to perform the risk management activities reliably, professionally and efficiently. In addition, management companies shall establish methods for the ongoing assessment of the quality of the services provided. These measures and methods shall, in all cases, allow management companies to ensure that the third parties are capable of performing the risk management activities in accordance with the applicable legal and regulatory requirements.

Furthermore, management companies shall ensure:

- the continuity of the risk management activities in case of problems relating to the delegation (e.g. breaches of contract, urgent need to revoke the mandate, material breaches by the third party);

- that they are informed by the third parties of any development which might have a serious impact on the ability of the latter to perform the risk management activities efficiently and in accordance with the applicable legal and regulatory requirements;

- that appropriate measures are taken if it is evident that the third parties can no longer perform the risk management activities efficiently and in accordance with the applicable legal and regulatory requirements, including terminating the contract if necessary.

In any event, the delegation to third parties neither relieves management companies in any way of their responsibility in relation to the adequacy and efficiency of the risk management policy, nor does it relieve them in terms of monitoring the risks associated with the activities of the UCITS they manage.

Management companies shall, in accordance with Article 6 of the CSSF Regulation, maintain the necessary resources and expertise to meet their obligations.

III.4 Determination of global exposure as per Article 42 (3) of the 2010 Law

III.4.1 General principles

Management companies shall determine the global exposure of UCITS at least once a day in accordance with Article 46 (2) of the CSSF Regulation which is further clarified by point 1 of Box 1 of ESMA Guidelines 10-788. According to these guidelines, the limits on global exposure shall be complied with on an ongoing basis. Thus, depending on the investment strategies pursued by certain UCITS, it is possible that management companies have to carry out intra-day calculations.

The new regulatory provisions no longer provide for a classification of UCITS as "sophisticated" or "unsophisticated". However, management companies shall assess the risk profile for each UCITS on the basis of the investment policy and strategy (including the use made of financial derivative instruments) in order to choose an appropriate method of calculating global exposure. Article 46 (3) of the CSSF Regulation and Box 1 of ESMA Guidelines 10-788 (as well as the accompanying explanatory text) determine the scope of this assessment.

In accordance with Article 46 (3) of the CSSF Regulation, management companies shall calculate global exposure by either using the commitment approach or the VaR approach or "any other advanced risk measurement methodologies as may be appropriate". In respect of this last option, and in accordance with point 2 of Box 1 of ESMA Guidelines 10-788, any other methodology can be used by management companies only where ESMA has published guidelines relating thereto.

III.4.2 Determination of global exposure using the commitment approach

Please be reminded that Article 47 of the CSSF Regulation specifies the conditions for the calculation using the commitment approach. While mainly only a few changes were introduced by Boxes 2 and 4 of ESMA Guidelines 10-788 on rules governing the commitment approach in relation to CSSF Circular 07/308, certain selective changes (non-exhaustive list) are as follows:

- the conversion methodology for "standard" financial derivative instruments is always the market value of the equivalent position in the underlying asset of the financial derivative instrument, the latter may be replaced by the notional value or the price of the futures in the case where these values lead to a more conservative result (point 1 of Box 2 of ESMA Guidelines 10-788);

- where any currency financial derivative instruments has two legs that are not in the base currency of the UCITS, both legs must be taken into account in the total commitment calculation (point 5 of Box 2 of ESMA Guidelines 10/788);

- the conversion methodology for "standard" financial derivative instruments also applies to contracts with a limited risk profile (such as long positions on options to buy or sell and protection buyer, respectively, through credit default swaps) (point 6 of Box 2 of ESMA Guidelines 10/788);

- a financial derivative instrument does not need to be taken into account when calculating the total commitment if the combined holding of a financial derivative instrument relating to a financial asset and cash which is invested in risk-free assets is equivalent to the direct holding of the given financial asset and the financial derivative instrument does not generate any incremental exposure and leverage or market risk. (Box 4 of ESMA Guidelines 10-788).

Moreover, the rules governing netting and hedging arrangements to be taken into account when calculating the total commitment have been set out by ESMA in Boxes 5 to 8. In particular, management companies may use (subject to compliance with certain conditions described in Box 7) the optional duration-netting rules. This regime takes into account the

sensitivity ("duration") of an interest rate financial derivative instrument compared to the reference sensitivity ("target duration") of the UCITS which has to be defined on the basis of its investment strategy and risk profile.

III.4.3 Optional regime for the calculation of global exposure using the commitment approach for certain types of structured UCITS

ESMA Guidelines 2011/112 specify the methods of risk measurement and the calculation of global exposure for certain types of structured UCITS and thus complete ESMA Guidelines 10-788. Indeed, they define an optional regime for the calculation of global exposure using the commitment approach for certain types of structured UCITS. This regime consists of calculating global exposure by using the commitment approach for every scenario to which investors may be exposed at any given time. The global exposure limit set out in Article 42 (3) of the 2010 Law shall be complied with for each scenario.

UCITS may only choose this optional regime if they comply with a list of well-defined criteria referred to in "Guideline 1" of Section II ("Policy Approach") of the document. Numerical examples are presented in this section to illustrate how this regime should be used in practice.

"Guideline 2" of this section specifies the transparency requirements at the level of the prospectus for structured UCITS making use of this optional regime.

III.4.4 Determination of global exposure using the VaR approach

In respect of Section III.2 above and pursuant to point 2 of Box 10 of ESMA Guidelines 10-788, management companies shall set a maximum VaR limit for each UCITS in accordance with the risk profile. Indeed, there are circumstances where, on the basis of the defined risk profile, management companies must set a maximum limit that is lower than the regulatory threshold (*i.e.* 200% in the case of a relative VaR or 20% in the case of an absolute VaR) set out in ESMA Guidelines 10-788 for ensuring consistency between the maximum limit and the risk profile.

Please be reminded that in case of the use of a confidence interval and/or a holding period other than those mentioned under point 2 of Box 15 of ESMA Guidelines 10-788, the maximum limit for absolute VaR (*i.e.* 20%) shall be adjusted in accordance with points 3 and 4 of this Box.

In respect of the relative VaR, ESMA Guidelines 10-788 (Sections 3.2 and 3.3) provide clarification on the reference portfolio, in terms of the inclusion of financial derivate instruments, risk profile, maintenance and documentation.

In respect of absolute VaR, ESMA Guidelines 10-788 strictly limit the level of the absolute VaR to 20% (where this VaR is determined on the basis of a 99% confidence interval and a holding period of 1 month/ 20 days), without the possibility of derogation.

Sections 3.6 and 3.7 of ESMA Guidelines 10-788 on the minimum requirements governing the use of the VaR approach contain several changes, the main ones of which are set out below (non-exhaustive list):

- Management companies shall carry out a back testing programme (Box 18) at least monthly (and not quarterly as specified in CSSF Circular 07/308) and shall report at least on a quarterly basis to the senior management if the number of "overshootings" for the most recent 250 business days exceeds 4 (for management companies determining the VaR based on a 99% confidence interval). This report shall contain an analysis and explanation of the reasons for "overshooting" as well as a statement of what remedial actions, if any, were taken to improve the accuracy of the model;

- the rules for stress testing (Boxes 19 to 21) are further clarified by ESMA by distinguishing the general provisions, quantitative and qualitative requirements;

- following initial development, as well as any significant change, the VaR model shall be subject to a review[2] by an independent party (e.g. internal or external auditor, third party, risk management unit) of the building process to ensure that the model is robust and reliable and adequately captures all material risks (point 3 of Box 22);

- the permanent risk management function shall perform ongoing documented review of the VaR model (including but not limited to back testing) and shall be adjusted where necessary if the results of the review suggest this (point 4 of Box 22);

- the documentation requirements in relation to the VaR model are specified (point 5 of Box 22);

- the permanent risk management function shall regularly monitor the leverage resulting from UCITS (point 1 of Boxes 22 and 23);

- Management companies shall, where appropriate, considering the risk profile and investment strategy pursued, supplement the VaR/stress-testing framework with other risk indicators (point 2 of Box 23).

Regarding transparency in relation to risk at the level of the prospectus and annual report, ESMA Guidelines 10-788 (Boxes 24 and 25) set out the global exposure requirements for UCITS.

III.5 Counterparty risk linked to OTC financial derivative instruments and to efficient portfolio management transactions

III.5.1 OTC financial derivative instruments

The counterparty risk linked to OTC financial derivative instruments shall be calculated, pursuant to Article 48 of the CSSF Regulation, as the positive mark-to-market value of the contract. The consideration of potential future credit risk (using add-on factors) and of the weighting factor depending on the credit quality of the counterparty (typically 20% or 50%) is no longer permitted.

The CSSF would like to point out (in accordance with Article 48 of the CSSF Regulation) that when calculating the UCITS' exposure to a counterparty, management companies may, on the one hand, base themselves on the net derivative positions, provided that they have the means to legally enforce netting arrangements with the counterparty on behalf of the UCITS and, on the other hand, reduce the exposure through the receipt of collateral.

Regarding collateral, ESMA Guidelines 10-788 only set out in Box 26 the general principles related thereto (e.g. in respect of liquidity, valuation and issuer credit rating).

Exposure in relation to the initial margins posted by UCITS to a broker and with variation margins to be received by UCITS from the broker within the context of financial derivative instruments dealt in on a regulated market or OTC derivatives, shall be included within the limits of 10% and 5% respectively of the counterparty risk provided for in Article 43 (1) of the 2010 Law if there are no arrangements that protect UCITS against the risk of insolvency of the relevant broker (point 1 of Box 27 of ESMA Guidelines 10-788).

[2] ESMA Guidelines refer to "validation".

III.5.2 Securities lending and reverse repurchase agreement transactions /repurchase agreement transactions

The net exposure of UCITS to counterparties in respect of securities lending or reverse repurchase agreement transactions / repurchase agreement transactions shall be taken into account within the limit of 20% provided for in Article 43 (2) of the 2010 Law pursuant to point 2 of Box 27 of ESMA Guidelines 10-788.

III.6 Valuation of OTC derivatives

While taking into account the principle of proportionality, management companies shall, pursuant to Article 49 of the CSSF Regulation, establish, document, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of OTC derivatives.

Moreover, the CSSF Regulation stipulates that specific duties and responsibilities in respect of the valuation of OTC derivatives shall be entrusted to the permanent risk management function, at least pursuant to Articles 13 (3) (f) and 49 (3) of the CSSF Regulation.

In this context, the valuation of OTC derivatives is now governed by the following legal and regulatory provisions:

- Articles 41 (1) (g) and 42 (1) of the 2010 Law;
- paragraphs (3) and (4) of Article 8 of the Grand Ducal Regulation of 8 February 2008 on the clarification of certain definitions;
- the guidelines laid down in point 21 of the CESR document entitled "CESR's guidelines concerning eligible assets for investment by UCITS, Ref. : CESR/07-044b, March 2007 (updated September 2008)" attached to CSSF Circular 08/380;
- Articles 13 (3) (f) and 49 of the CSSF Regulation.

IV. Further clarifications from the CSSF on risk management rules

IV.1 Limitation of Counterparty Risk

IV.1.1 Scope of Article 43 (1) of the 2010 Law

Pursuant to Article 43 (1) of the 2010 Law, the counterparty risk linked to OTC derivatives concluded by a UCITS may not exceed 10% of its assets when the counterparty is a credit institution referred to in Article 41 (1) (f) of the 2010 Law or 5% of its assets in other cases.

The CSSF would like to clarify that transactions in financial derivative instruments dealt in on a regulated market whose clearing house complies with the three following conditions may, in principle, be excluded from the calculation of the use of the counterparty risk limitations:

- backing by an appropriate completion guarantee;
- daily valuation of the market values of the positions on financial derivative instruments; and
- making margin calls at least once a day.

As already mentioned in Section III.5.1., exposure in relation to the initial margin posted by UCITS to a broker, and variation margin to be received by UCITS from the broker relating to financial derivative instruments dealt in on a regulated market or OTC derivatives, shall be included in the counterparty risk limits of 10% and 5% respectively as set out in Article 43 (1)

of the 2010 Law if there are no arrangements that protect UCITS against the insolvency risk of the relevant broker (point 1 of Box 27 of ESMA Guidelines 10-788).

IV.1.2 Quality of the counterparty to OTC derivatives

The counterparties to OTC derivative transactions shall be institutions subject to prudential supervision and belonging to the categories approved by the CSSF in accordance with Article 41 (1) (g) of the 2010 Law (*e.g.* credit institutions, investment firms). Moreover, they shall be specialised in this type of transactions.

IV.2 Limitation of the counterparty risk associated with OTC derivatives through the receipt of collateral

The CSSF would like to clarify that the list referred to in Section II (b) ("Receipt of an appropriate guarantee") of CSSF Circular 08/356, which includes the types of collateral which are eligible for the purpose of limiting the counterparty risk linked to efficient portfolio management transactions also applies within OTC derivative transactions. Notwithstanding the above, the rules outlined in point 1 of Box 26 of ESMA Guidelines 10-788 shall also be complied with.

The CSSF would like to draw your attention to points 2 and 3 of Box 26, and in particular to the need to define and to apply appropriate and prudent discounts.

Moreover, collateral received by a UCITS, other than cash, cannot be sold, reinvested or pledged. Cash collateral can only be reinvested in risk-free assets which are eligible under the 2010 Law, *i.e.* eligible assets which do not provide a yield greater than the risk-free rate.

IV.3 Counterparty risk associated with efficient portfolio management transactions

This Circular replaces the following paragraph of Section II (a) ("Limitation to the counterparty risk") of CSSF Circular 08/356:

"The risk exposure to a single counterparty of the UCITS arising from one or several securities lending transactions, sale *with right of repurchase transactions and/or reverse repurchase / repurchase transactions may not exceed 10% of its assets when the counterparty is a credit institution referred to in Article 41, paragraph (1), point f) of the Law of 20 December 2002, or 5% of its assets in other cases."*

by the following text:

"The net exposures (*i.e.* the exposures of the UCITS less the collateral received by the UCITS) to a counterparty arising from securities lending transactions or reverse repurchase / repurchase agreement transactions shall be taken into account in the 20% limit provided for in Article 43 (2) of the 2010 Law pursuant to point 2 of Box 27 of ESMA Guidelines 10-788."

Consequently, the specific limits of 5%/10%, as indicated in CSSF Circular 08/356 are no longer applicable.

IV.4 Limitation of concentration risk

IV.4.1 General principles

In accordance with Article 42 (3) of the 2010 Law, a UCITS may invest in financial derivative instruments, provided that the exposure to the underlying assets does not exceed, in aggregate, the investment limits laid down in Article 43 of this Law.

In principle, this provision only covers financial derivative instruments the underlying of which (*e.g.* title deeds) involves an issuer- risk.

Box 27 of ESMA Guidelines 10-788 corroborates Article 48(5) of the CSSF Regulation according to which the financial derivative instruments shall be taken into account (for the determination of the use of concentration limits) by all UCITS (regardless of the determination method used to calculate global exposure) through the commitment approach, where appropriate, or through the maximum potential loss approach. More specifically, if the methodology of conversion of financial derivative instruments into the equivalent position in the underlying asset (*i.e.* commitment approach) proves to be inadequate, due, for example, to the complexity of the relevant financial derivative instrument, the approach of the maximum potential loss linked to that financial derivative instrument shall be used. The latter is then considered as the maximum threshold for assessing the loss risk which the UCITS may suffer on that position in case of default by the issuer.

Units of UCIs and UCITS referred to in Article 41 (1) (e) of the 2010 Law shall also be taken into account as underlying assets of financial derivative instruments pursuant to point 4 of Box 27 of ESMA Guidelines 10-788.

The financial derivative instruments embedded ("embedded derivatives") in transferable securities or money-market instruments shall, for the purposes of this section, be isolated according to the methods described above and taken into account in the determination of the use of the risk concentration limits.

IV.4.2 Netting the positions for the determination of the use of concentration limits in respect of financial derivative instruments

The CSSF would like to point out that UCITS may, when determining the use of the concentration limits referred to in the 2010 Law, benefit from possible netting effects subject to compliance with the following rules:

- positions in financial derivative instruments may be netted, provided that they refer to the same underlying asset, without necessarily having the same maturity date;

- positions in financial derivative instruments (e.g. linked to a transferable security) may be netted with positions held directly by the UCITS provided that they refer to the same underlying asset;

- an underlying asset is considered as identical when it is issued by the same legal entity, it belongs to the same asset class (e.g. title deeds; debt instruments) and has the same priority in terms of repayment;

- the netting can only be done for equal commitment amounts determined on the basis of the commitment approach;

- the netting process shall be closely monitored by the permanent risk management function.

The netting rules as detailed above, vary from those applicable to the global exposure determination (see Box 6 of ESMA Guidelines 10-788) by the fact that the concept of "identical underlying asset" is interpreted in a slightly different way.

IV.4.3 Specific provisions for index-based financial derivative instruments

Pursuant to Article 42 (3) of the 2010 Law and point 6 of Box 27 of ESMA Guidelines 10-788, UCITS may, in determining the use of concentration limits, exclude financial derivative instruments based on an index:

- the composition of which is sufficiently diversified;

- which represents an adequate benchmark for the market to which it refers;

- which is published in an appropriate manner.

IV.4.4 Reinvestments of collateral received by the UCITS within OTC derivative transactions and efficient portfolio management transactions

a) Reinvestment of collateral received within OTC derivative transactions

Reinvestments of cash collateral received within OTC derivative transactions shall be taken into account, pursuant to point 2 of Box 27 of ESMA Guidelines 10-788, within the diversification limits applicable under the 2010 Law.

b) Reinvestment of collateral received within efficient portfolio management transactions

This Circular repeals the following paragraph of Section III ("Reinvestment of cash provided as a guarantee") of CSSF Circular 08/356:

"The reinvestment of cash received as a guarantee is not subject to the diversification rules generally applicable to UCITS, provided however, that the UCITS shall avoid an excessive concentration of its reinvestments, both at the issuer level and at the instrument level. Reinvestments in assets referred to in items a) et d) above are exempt from this requirement."

This paragraph is replaced by the following provision, pursuant to point 2 of Box 27 of ESMA Guidelines 10-788:

"Exposures arising from the reinvestment of collateral received by the UCITS within securities lending transactions, sale with right of repurchase transactions and reverse repurchase agreement transactions / repurchase agreement transactions shall be taken into account within the diversification limits applicable under the 2010 Law."

IV.5 Risk transparency at the level of the prospectus

Box 24 (further clarified in points 76 and 77 of the explanatory text) of ESMA Guidelines 10-788 provides that UCITS include the following information in the prospectus:

- global exposure determination methodology, making a distinction between the commitment approach, the relative VaR or the absolute VaR approach;
- the expected level of leverage, as well as the possibility of higher leverage levels (for UCITS using a VaR approach);
- information on the reference portfolio for UCITS using the relative VaR approach.

The CSSF would like to provide some clarification in this regard:

IV.5.1 Presentation of information in the prospectus

UCITS shall present this information clearly and precisely in the prospectus.

This information shall be included in the prospectus during an update of the same which shall occur by **31 December 2011** at the latest.

IV.5.2 Assessment and disclosure of the expected level of leverage

In view of ESMA Guidelines 10-788 (Boxes 2 and 9), the CSSF specifies that the leverage shall be determined by taking into account both the financial derivative instruments concluded by UCITS, the reinvestment of collateral received (in cash) in relation to efficient portfolio management transactions (as provided for in Box 9 of the aforementioned ESMA Guidelines)

as well as any use of collateral within any other efficient portfolio management transaction in particular in respect of any other securities lending or repurchase transaction of collateral.

Point 3 of Box 24 states in particular that the sum of the notionals of the financial derivative instruments shall be used as a reference for the determination of leverage to be disclosed in the prospectus. In respect of financial derivative instruments which do not have a notional value, UCITS shall, in principle, base themselves on the market value of the equivalent position in the underlying asset.

The CSSF would like to point out that the commitment approach as set out in Article 47 of the CSSF Regulation (and further specified in ESMA Guidelines 10-788, in Boxes 2 to 9) may also be used.

In view of this possibility, the leverage calculation method (sum of notionals or commitment approach), shall be specified conjointly with the leverage level.

Explanations in respect of the leverage level can be provided by the UCITS.

In this context, the CSSF would like to further remind you, that the prospectus shall, pursuant to Article 47 of the 2010 Law, include a prominent statement specifying whether financial derivative transactions may be used for hedging purposes or in furtherance of the investment objectives as well as the possible effects of using financial derivative instruments on the risk profile. In addition, if the net asset value of a UCITS is susceptible to increased volatility as a result of the composition of the portfolio or the management techniques that may be used, the prospectus has to contain a prominent statement drawing attention to this characteristic of the UCITS.

IV.5.3 Content of information on the reference portfolio in respect of UCITS using the relative VaR

UCITS using the relative VaR approach for the global exposure calculation shall include information on the reference portfolio in the prospectus. This information shall allow investors to have a clear and precise idea of the risk profile of this reference system.

In the case where the reference portfolio is based on an index or a combination of indices, UCITS shall in particular include either the name of the index (or indices) in the prospectus (with, where appropriate, the proportion of each index), or information on the index or (indices) which describes the elements determining the risk profile of this portfolio, like for example:

- the type of transferable securities (e.g. shares, bonds);
- the country / geographical area;
- the economic sector;
- the type of issuer (e.g. firms, sovereigns, credit institutions);
- the market capitalisation (e.g. large, medium, small);
- the credit rating;
- the proportion of assets with the same characteristics.

In the case where the reference portfolio is based on a pool of assets, the management company shall include information based on these elements.

In addition, UCITS shall assess the interest for investors to have additional information on the reference portfolio either directly in the prospectus, by reference to a website mentioned in the prospectus or by providing it, free of charge, at the management company or the SIAG.

IV.6 Risk transparency at the level of the annual report

Box 25 of ESMA Guidelines 10-788 provides that UCITS shall communicate the following information in the annual report:

- the method used to calculate global exposure, making a distinction between the commitment approach, the relative VaR or the absolute VaR approach;
- information on the reference portfolio for UCITS using the relative VaR approach;
- information on the VaR limit including (at least) the lowest, the highest and the average utilisation during the last financial year, as well as on the type of model (e.g. historical simulation, Monte-Carlo simulation) and on parameters (e.g. confidence interval, holding period, observation period);
- the leverage level reached during the last financial year (for UCITS using the VaR for the global exposure determination).

This information shall appear for the first time in the annual report of the UCITS relating to the financial year ending on 31 December 2011. In respect of numerical information to be provided for this first time, the observation period shall cover the period from 1 July 2011 to 31 December 2011.

Clarifications provided in the preceding section relating to transparency at the level of the prospectus are also applicable to the annual report regarding the leverage level and information on the reference portfolio (in the case of relative VaR).

UCITS may provide information on the use of the VaR either by reference to the regulatory limits (*i.e.* 200% in the case of relative VaR or 20% in the case of absolute VaR) or by reference to the maximum limits defined, or finally by reference to these two types of limits. In any case, UCITS shall clearly indicate the limits in respect of which they express the levels of VaR reached. Moreover, if UCITS decide to disclose information on the maximum limits, they shall include the levels of the calculated limits in the annual report.

Information on the VaR (minimum, maximum, average) shall be based on all the VaR defined during the financial year.

Regarding the leverage level, UCITS may, for example, base their information on the average of the leverage effects observed (and followed) during the last financial year. Input data shall be issued at least twice a month.

V. <u>The risk management process to be communicated to the CSSF</u>

V.1 Content and format of the risk management process

Pursuant to Article 42 (1) of the 2010 Law, the CSSF requires management companies to provide certain information in relation to the risk management policy in order to identify, measure, manage, control and report on the risks that may be material for the UCITS they manage.

Management companies shall observe, in particular, the following rules when completing and communicating the risk management process to the CSSF:

a. the risk management process shall strictly follow the format laid out in the Appendix;

b. comments, explanations, descriptions and demonstrations provided shall be succinct;

c. all the sections indicated in the Appendix shall be completed and, where appropriate, if one of them is not applicable (*e.g.* the VaR approach for calculating the global

exposure), then the heading shall be kept and "not applicable" shall be entered under the heading;

d. the process shall be transmitted electronically to opc@cssf.lu;

e. an update of the risk management process shall be transmitted to the CSSF at least once a year at the closing date of the management company's financial year; this transmission shall be done, at the latest, one month after this closing date;

f. the process shall, at any time, cover all managed UCITS (including their sub-funds).

In the case of significant amendment to the risk management policy (*e.g.* new financial products), management companies shall update the risk management process and notify the CSSF by transmitting an updated version of this process.

Prior to introducing a new UCITS to the CSSF (including a sub-fund), management companies shall ensure in particular the adequacy of the risk management policy (and therefore the risk management process).

If this is the case, management companies shall confirm this to the CSSF in writing when introducing the new UCITS file by referring to the latest version of the risk management process transmitted.

If it is not the case, (*e.g.* lack of cover of the UCITS by the risk management policy), management companies shall adapt their risk management policy to reflect those changes in the risk management process and then transmit this document to the CSSF together with the other elements of the file regarding the new UCITS.

V.2 Specific provisions in respect of the risk management process

The risk management process as set out in Section V.1. and in accordance with the format presented in the Appendix shall be communicated to the CSSF by 31 December 2011 at the latest (except in relation to newly created management companies as set out in more detail in Section V.2.1. below).

V.2.1 New management companies within the meaning of Chapter 15 of the 2010 Law

Every new management company subject to Chapter 15 of the 2010 Law shall, as part of the authorisation file to be filed with the CSSF, submit a risk management process in accordance with the format (as well as the rules relating thereto) presented in the Appendix.

V.2.2 Management companies currently subject to Chapter 13 of the 2002 Law

Management companies that are currently subject to Chapter 13 of the 2002 Law shall, pursuant to CSSF Circular 11/508, and by **1 June 2011 at the latest**, submit an updated authorisation file complete with the new elements required by the 2010 Law and the CSSF Regulation.

More specifically, these management companies shall conduct an update of their risk management process, taking into account not only the provisions of CSSF Circular 07/308 (*i.e.* information required in application of Section V), but also the requirements of Articles 42 to 50 of the CSSF Regulation and the ESMA Guidelines.

As indicated above, these management companies shall communicate a risk management process in accordance with the format (as well as the rules relating thereto) presented in the Appendix for the first time by **31 December 2011** at the latest.

VI. Transitional, repealing and final provisions

VI.1 Transitional provisions

The 2010 Law entered into force on 1 January 2011.

Given that the 2010 Law entered into force prior to the deadline for the transposition of Directive 2009/65/EC of 1 July 2011, the text of this Law contains transitional provisions, the most important, in the context of this Circular, being the following:

- UCITS subject to Part I of the 2002 Law and management companies subject to Chapter 13 of the 2002 Law and established before the entry into force of the 2010 Law (i.e. prior to 1 January 2011) have the option, until 1 July 2011, to remain subject to the 2002 Law or to be subject to the 2010 Law, from 1 July 2011, these UCITS and management companies shall ipso jure be governed by this new Law;

- UCITS subject to Part I of the 2002 Law and management companies subject to Chapter 13 of the 2002 Law and established between 1 January and 1 July 2011 have the option, until 1 July 2011, to be subject either to the 2002 Law or to the 2010 Law; from 1 July 2011, these UCITS and management companies shall ipso jure be governed by the new Law.

Considering the transitional provisions of the 2010 Law, UCITS and management companies respectively, which are considering remaining subject to the 2002 Law until 1 July 2011, shall *ipso jure* be governed by the CSSF Regulation, the ESMA publications as well as this Circular as from 1 July 2011.

Thus, CSSF Circular 07/308 remains applicable until 1 July 2011 to UCITS and management companies, respectively, which have decided to remain subject to the 2002 Law until 1 July 2011.

The CSSF Regulation, the ESMA publications as well as this Circular shall be applicable, however, directly to UCITS and management companies governed by Chapter 13 of the 2002 Law which (during the transitional period between the date of entry into force of the 2010 Law and 1 July 2011) decide to be subject to the provisions of the 2010 Law.

All UCITS and management companies are *ipso jure* governed by the CSSF Regulation, the ESMA publications and this Circular as from 1 July 2011.

VI.2 Repealing and final provisions

CSSF Circular 07/308 is repealed with effect from 1 July 2011, with the exception of the provisions of Section V of this circular which remain in force until 31 December 2011.

This Circular enters into force with immediate effect.

Appendix

APPENDIX: CONTENT OF THE RISK MANAGEMENT PROCESS TO BE COMMUNICATED TO THE CSSF

1. Governance and organisation of the risk management function.

1.1. Simplified organisation chart of the risk management function

1.1.1. A general organisation chart of the risk management function must be provided and shall:

- mention the parties involved in the management of the main risk types (the overall information is included under 1.4);
- indicate the number of people in each team involved in risk management;
- mention the main reporting lines (*e.g.* hierarchy, occupational structure, risk management committee, valuing committee, management committee, boards of directors, senior management, etc.), the overall information is included under 1.2;
- highlight the possible risk management activities delegated to third parties (the names of such third parties shall be mentioned);
- describe each situation, where several situations are to be taken into account (*e.g.* as a result of different managers or different funds or types of funds), and clearly indicate the extent of each situation.

1.1.2. The organisation chart shall be commented on and include a description of the relevant persons' experience. The name and CV of the person, at the level of the company, in charge of the risk management function shall be provided.

1.2. Governance structure

1.2.1. The governing bodies (notably the senior management, committees and counsel) involved in risk management shall be described in the table below.

Bodies	**Role/ responsibilities**	**Composition/ members**	**Frequency of meeting**
Counsel X			
Counsel Y			
Senior management			
Committee ABC			
...			

1.3. Pursuant to Article 13 of the CSSF Regulation, the independence of the permanent risk management function shall be demonstrated. It shall be established (where appropriate) that adequate protection measures have been taken against conflicts of interest so that risk management activities can be carried out independently.

1.4. Risk management policy

1.4.1. The risk management policy shall be described and shall specify the risks covered. Article 43 of the CSSF Regulation refers to market, liquidity and counterparty risks, as well as all other risks, including operational risks, which may be material for UCITS (including risks which may be material for UCITS and which are not specifically addressed in the following sections of this Appendix).

1.4.2. Compliance of the risk management policy with all the provisions set forth in Article 43 of the CSSF Regulation shall be demonstrated.

1.4.3. The main procedures which the risk management process include shall be listed (see Article 43 of the CSSF Regulation).

1.5. Permanent risk management function

1.5.1. The role of the permanent risk management function shall be described, and a brief description of how it meets each requirement of Article 13 (3) of the CSSF Regulation shall also be made (*i.e.* control of risk levels, reporting[3]).

1.5.2. The process for establishing the risk profiles of each UCITS shall be described.

1.6. The process for assessing, controlling and periodically reviewing the adequacy and effectiveness of the risk management policy shall be described, together with the relevant reporting to the senior management, the board of directors and, where it exists, the supervisory function. A copy of each information report as at the closing date of the financial year of the management company shall be attached. In this respect, CSSF Circular 11/508 requires that the regular reports to be made by the risk management function shall be communicated to the CSSF at least once a year. This communication of information shall ideally be made using the aforementioned Appendix.

1.7. The regular reports on risk management shall be described in the table below; as for the risks covered by the risk management policy (see under 1.4) and at least for the risks included in the table, a description of the information reports on the management of such risks shall be made. A copy of each information report as at the closing date of the financial year of the management company shall be attached. In this respect, CSSF Circular 11/508 requires that the regular reports to be made by the risk management function shall be communicated to the CSSF at least once a year. This communication of information shall ideally be made using the aforementioned Appendix.

[3] For the sake of conciseness, a reference to point 1.7 below shall be made for a description of the information reports on risk management.

Risks covered	Report title	Issuing body	Recipients***	Frequency
Market*				
Liquidity				
Counterparty				
Operational				
Credit				
Compliance**				

* Spread risk included

** Monitoring of investment restrictions

*** Names of persons or bodies and respective status

1.8. The IT systems used for risk management shall be described using the table below, and a description of such systems shall be made with respect to the risks covered by the risk management policy (see under 1.4) and at least for the risks included in the table.

Risks covered	IT system	Person in charge of the setup***	Person in charge of risk monitoring
Market			
Liquidity			
Counterparty			
Operational			
Credit			
Compliance*			
Valorisation **			

* Monitoring of investment restrictions

** See below under Sections 8 and 10.

*** Parameters include for example, the development, the maintenance and the management of the IT System

1.9. Agreement(s) with one or several specialised third parties on the carrying-out of risk management activities.

1.9.1. The measures taken to ensure that such third party(ies) has (have) the ability and capacity to perform the risk management activities reliably, professionally and effectively shall be described.

1.9.2. The prudential supervision status, if any, of the third party(ies) involved in the carrying out of risk management activities shall be given.

1.9.3. The existence of contracts pertaining to the agreement(s) with one or several third parties on the carrying out of risk management activities shall be confirmed.

1.9.4. The ongoing assessment of the standard of performance of the third party(ies) shall also be described.

1.9.5. It shall be confirmed that the risk management process includes answers to the requirements listed in this Appendix, taking into account those risk management activities which are governed by agreement(s) with one or several third parties and, where appropriate, on the basis of the procedures, systems and methods used by such third party(ies).

1.10. The policy and validation process of any new product, instrument, investment process and new activity shall be described.

1.11. A description of how the risk management activities are in the scope of the Compliance function and the internal audit function shall be made.

2. Determination and monitoring of global exposure

2.1. General issues

2.1.1. A description and a justification (taking into account the investment strategies of the managed UCITS) of the frequency of global exposure calculation shall be required.

2.1.2. The self-assessment process of the UCITS risk profile, which ensures that the approach for calculating the global exposure is appropriate, shall be made.

2.1.3. Confirmation that only the methods for which ESMA has published guidelines are used for calculating the global exposure shall be required.

2.1.4. Where appropriate, in relation to Boxes 1 (point 5) and 23 (point 2) of ESMA Guidelines 10-788, the other risk measurement methods shall be described specifying the reasons for and the context of their use. Please be reminded that management companies shall, where appropriate, take into account the risk profile and the investment strategy to complete VaR/stress-testing approach by other risk measurement methods (point 2 Box 23).

2.2. Commitment approach

2.2.1. Confirmation shall be given that the process for calculating global exposure in relation to financial derivative instruments on the basis of the commitment approach is implemented in accordance with the steps provided for in point 2 of Box 2, of ESMA Guidelines 10-788.

2.2.2. If a financial derivative instrument is not taken into account in the calculation of global exposure according to the conversion methodology set out in Box 2, the conversion methodology used for this investment shall be described and, where appropriate, the process of transition to the methodology set out in Box 2 shall be explained.

2.2.3. The possible alternative approaches used for non-standard financial derivative instruments which cannot be converted to market value or to the notional value of the equivalent underlying assets representing an insignificant proportion of UCITS shall be described.

2.2.4. The netting policies and, where appropriate, the duration-netting policies shall be described, and compliance of such policies with ESMA Guidelines 10-788 shall be demonstrated.

2.2.5. The hedging policy shall be described, and compliance of this policy with ESMA Guidelines 10-788 shall be demonstrated.

2.2.6. Compliance of the processing of efficient portfolio management techniques with the provisions set out in Box 9 of ESMA Guidelines 10-788 shall be confirmed.

2.3. VaR approach

2.3.1. It shall be confirmed that all the UCITS positions are taken into account for VaR calculation.

2.3.2. The procedures for determining the maximum limits in VaR (according to the risk profiles for each UCITS and each sub-fund, respectively) and for determining the (absolute or relative) approach of the relevant VaR model shall be described. The documentation of these processes shall be specified.

2.3.3. The tasks carried out by the permanent risk management function in relation to point 1 of Box 22 of ESMA Guidelines 10-788 shall be described.

2.3.4. The validation process of the VaR model (point 3 of Box 22 of ESMA Guidelines 10-788) shall be described.

2.3.5. The VaR calculation model(s) shall be described, making reference at least to the information in items a) to d) of point 5 of Box 22, item 5 ("Documentation and Procedures") of ESMA Guidelines 10-788.

2.3.6. The calculation standards used in the model(s) shall be described in reference to those mentioned in Box 15 of ESMA Guidelines 10-788, and compliance with the provisions in Box 15 shall be confirmed.

2.3.7. As for the model(s) used, a description of how compliance with the provisions in Box 16 ("Risk Coverage") of ESMA Guidelines 10-788 is ensured shall be made.

2.3.8. As for the model(s) used, a description of how compliance with the provisions in Box 17 ("Completeness and accuracy of the risk assessment") of ESMA Guidelines 10-788 is ensured shall be made.

2.3.9. If the relative VaR model is used, the process for determining and maintaining the reference portfolio shall be described and compliance with points 1 and 2 of Box 12 of ESMA Guidelines 10-788 shall be confirmed.

2.4. Back testing

2.4.1. A description of how the back testing programme works shall be made and its compliance with Box 18 of ESMA Guidelines 10-788 shall be demonstrated. The policy shall be specified in case of excessive overshootings.

2.5. Stress testing

2.5.1. A description of how the stress testing programme works shall be made and its compliance with Boxes 19 to 21 of ESMA Guidelines 10-788 shall be demonstrated. The risks which are subject to stress testing as well as simulated scenarios shall be described and justified. The taking into account of the stress testing results in the risk management, reporting and investment decision processes shall be specified.

2.6. Disclosure

2.6.1. Compliance with the principles set forth in Box 24, and 25, respectively of ESMA Guidelines 10-788 of disclosure of the information in the prospectus and, respectively, the annual report shall be confirmed.

2.6.2. The method(s) for determining leverage shall be detailed.

3. Determination and monitoring of liquidity risk

3.1. The liquidity risk management policy shall be described.

3.2. It shall be demonstrated that the liquidity risk management policy ensures compliance with the repurchase obligation laid down in the Law of 2010 and explained how the liquidity profiles of the investments of the UCITS are in conformity with the redemption policy of these UCITS.

3.3. Where appropriate, a description of the stress tests carried out shall be made in order to assess the liquidity risk which UCITS are subject to in exceptional circumstances.

4. Determination and monitoring of the counterparty risk arising from OTC derivatives

4.1. The counterparty risk management policy in respect of OTC derivatives shall be described.

4.2. The process for selecting counterparties (criteria, etc.) shall be described.

4.3. The method for calculating the counterparty risk shall be confirmed.

4.4. The policy in connection with mitigation techniques (netting, definition of eligible collateral, collateral management, discounts, monitoring of collateral, allocation of responsibilities with respect to management and monitoring of collateral, etc.) relating to the counterparty risk shall be described.

5. Determination and monitoring of the counterparty risk arising from techniques and instruments (efficient portfolio management)

5.1. The counterparty risk management policy in respect of techniques and instruments shall be described, in particular with reference to the provisions of Circular 08/356 and ESMA Guidelines.

5.2. The process for selecting counterparties (criteria, etc.) shall be described.

5.3. The policy in relation to the collateral (definition of eligible collateral, collateral management, discounts, monitoring of collateral, allocation of responsibilities with respect to management and monitoring of collateral, etc.) used for mitigating counterparty risk linked to these transactions shall be described.

6. Determination and monitoring of operational risk

6.1. The operational risk management policy shall be described.

6.2. A description of the material operational risks to which UCITS are subject and how these risks are assessed and managed shall be made.

6.3. A brief description of the business continuity policy shall be made.

7. Determination and monitoring of concentration limits

7.1. The concentration risk management policy shall be described.

7.2. The financial derivative instruments used by UCITS for which a commitment approach cannot be used within the concentration limits shall be indicated.

8. Determination and monitoring of the valuation risk

8.1. The valuation risk management policy shall be described.

8.2. The procedures pertaining to the holding and valuation of products (which are not financial derivative instruments) which are less liquid or have a more complex pay-off shall be specified, with an indication particularly of the specific duties and responsibilities of the permanent risk management function.

9. Determination and monitoring of legal risks

9.1. The legal risks linked to the use of OTC derivatives (framework agreement clauses, compensation clauses, collateral management agreements, etc.) to which UCITS are subject shall be described, and an explanation given of how they are assessed and managed.

10. Valuation of OTC derivatives

10.1. The policy and methods for valuing OTC derivatives in order to ensure an appropriate, transparent fair and independent valuation of UCITS' exposure to these derivatives shall be described.

10.2. The OTC derivatives present in UCITS shall be listed, and the valuing principles shall be described using the (illustrative) table below. If necessary, the table shall be commented on.

Financial Derivative Instruments	**Volume***	**Price in NAV**				**Valuing check*****		
		Price provider	Valuing frequency	Valuing system	Independent source**	Source	Frequency	System
IRS	180	Head Office	Daily	Software package ABC	Yes	-	-	-
Variance Swaps	15	Counterparty	Daily	-	No	Management Company	Daily	Software JKL
CDS	80	Head Office	Daily	Software DEF	Yes	-	-	-
TRS	40	Counterparty	Daily	-	No	Head Office	Daily	Software DEF
…								

* Number of agreements. The scope of the funds covered by the number of agreements shall be specified.

** Independence of the manager and the counterparty.

*** Probability checks (D/D-1 type) are not included; the check here concerns the use of multiple price sources.

11. Monitoring of cover rules

11.1. The cover rules for financial derivative instruments transactions shall be described. Where appropriate, the management of hedging by high-leverage UCITS in order to avoid default risks shall be specified.

12. Management companies and individual management

12.1. With respect to management companies providing investment portfolio management services, pursuant to Article 101 (3) of the Law of 2010, on a discretionary, client-by-client basis in accordance with mandates given by investors, the process shall briefly describe how such management companies comply with the risk management requirements under MiFID (Article 37-1 of the Law of 5 April 1993 on the financial sector, Grand Ducal Regulation of 13 July 2007, etc.).

13. List of UCITS

13.1. The list of UCITS (under Luxembourg law and that of other Member States) subject to this risk management process shall be provided. The list shall clearly distinguish between Luxembourg UCITS and of other member States.

14. Concluding chapter

14.1. To conclude this document, the senior management shall give an opinion on the compliance of the risk management policy with the requirements of the 2010 Law, the CSSF Regulation, ESMA Guidelines and any other relevant rule.

14.2. Where appropriate, information on ongoing developments carried out to improve the risk management policy, process, techniques or tools shall be submitted.

20.

CSSF CIRCULAR 11/509

RELATING TO NEW NOTIFICATION PROCEDURES TO BE FOLLOWED BY A UCITS GOVERNED BY LUXEMBOURG LAW WISHING TO MARKET ITS UNITS IN ANOTHER MEMBER STATE OF THE EUROPEAN UNION AND BY A UCITS OF ANOTHER MEMBER STATE OF THE EUROPEAN UNION WISHING TO MARKET ITS UNITS IN LUXEMBOURG

CSSF Circular 11/509 relating to new notification procedures to be followed by a UCITS governed by Luxembourg law wishing to market its units in another Member State of the European Union and by a UCITS of another Member State of the European Union wishing to market its units in Luxembourg

Luxembourg, 15 April 2011

To all undertakings for collective investment in transferable securities governed by Luxembourg law, to UCITS of another Member State of the European Union wishing to market their units in Luxembourg and to those involved in the operation and control of these undertakings

CSSF CIRCULAR 11/509

Re: New notification procedures to be followed by a UCITS governed by Luxembourg law wishing to market its units in another Member State of the European Union and by a UCITS of another Member State of the European Union wishing to market its units in Luxembourg

Ladies and Gentlemen,

Directive 2009/65/EC of the European Parliament and the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS Directive) has introduced, amongst others, a new notification procedure for UCITS which intend to market their units in a Member State of the European Union (Member State) other than those in which they are established. This notification procedure, which aims to facilitate the distribution of UCITS in the European Union, is in principle applicable directly between the supervisory authorities of the Member States on the basis of a file that the UCITS must submit to the supervisory authority of the home Member State.

The provisions of the aforementioned Directive 2009/65/EC have been transposed by Chapters 6 and 7 of the Law of 17 December 2010 on undertakings for collective investment (hereafter "2010 Law").

This Circular aims to clarify the practical and technical procedures that UCITS must follow for cross-border marketing.

1. UCITS governed by Luxembourg law marketing their units in another Member State

In accordance with Article 54 of the 2010 Law, a UCITS shall first submit a notification letter to the CSSF which contains information on the arrangements for marketing in the host Member State as well as the latest versions of a number of documents specified in more detail under point 1.3 of this Circular.

The CSSF shall verify that the documentation provided by the UCITS in accordance with paragraphs (1) and (2) of Article 54 is complete prior to transmitting the complete documentation to the competent authorities of the host Member State.

This regulator to regulator transmission is notified without delay by the CSSF to the UCITS, which may access the market of the relevant host Member State from that date (for technical details see Annex 1, point 3).

It should be noted that in accordance with Article 54 (4) of the 2010 Law, the UCITS notifies the competent authorities of the host Member State itself in case of any amendment to the previously communicated information regarding the arrangements for marketing.

1.1. Notification procedure

Two notification procedures have to be distinguished, namely one where a file is deposited with the CSSF and one where a notice of amendment is to be submitted directly by the UCITS to the competent authority of the host Member State.

a) The submission of a notification file with the CSSF applies in all cases where a UCITS proposes to market its units in another Member State of the European Union, in particular:

- upon notification of the competent authority of a host Member State by a UCITS proposing to market all or part of its units in that State;
- upon notification of the competent authority of a host Member State by an umbrella UCITS proposing to market all or part of the units of one or several of its compartments in that State; and
- upon notification of the competent authority of a host Member State by an umbrella UCITS proposing to market all or part of its units of one or several additional compartments (whereas the marketing of units of other compartments has already been notified in that State).

b) *A written notice of amendment is to be addressed directly to the competent authority of the host Member State in case of an amendment to the information regarding the arrangements intended for marketing set out in the notification letter or an amendment of the share classes to be marketed. This notice is to be sent before implementing the amendment in question. It is not necessary to file a copy of this notice with the CSSF.*

The CSSF remains responsible, however, for the approval of any amendment to the prospectus and instruments of incorporation of the UCITS and this approval must be obtained prior to sending the aforementioned notice of amendment, to the competent authority of the host Member State.

1.2. Submission of the notification file to the CSSF

The CSSF requires that the notification file is submitted electronically using one of the following methods:

- systems based on channels accepted by the CSSF in accordance with the provisions of CSSF Circular 08/334;
- direct filing of the required documents on the CSSF website (subject to the preliminary conditions specified on the CSSF website).

Within the framework of the notification procedure in electronic form, UCITS must submit a notification file containing the documents described in point 1.3 of this Circular.

It is also necessary to ensure the preparation and transmission to the CSSF of a complete notification file for each host Member State in which the UCITS intends to market its units.

From a technical point of view, all the documents constituting a notification file intended for a given host Member State must be grouped together in a "single package" per host Member State (zip file). Further details on the nomenclature and format for electronic transmission are specified in Annexes 1, 2, 3 and 4 of the Circular.

1.3. The documentation constituting the notification file

With regard to the notification of the marketing of units of a UCITS in another host Member State, the notification file transmitted electronically to the CSSF must contain the following documents:

Type of document	Abbreviation	Specifications
Notification letter	LN	Details on the format and mapping of the notification letter can be found in Annex 4. The notification letter must be exactly like the template provided for in Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities.
CSSF attestation letter	AT	The attestation to be attached to the file is the attestation that the CSSF delivered to the UCITS together with the latest visaed prospectus.
Management Regulations or Articles of incorporation	MR AI	The latest version of the Management Regulations of common funds or the latest consolidated version of the Articles of Incorporation of investment companies must be annexed to the file as a single document.
Prospectus	PC	The prospectus to be annexed to the file has to be the latest prospectus visaed by the CSSF.
Key Investor Information Document	KI	According to the Law of 17 December 2010 the KI is to be provided in a language or translation accepted by the host Member State of the UCITS. In the absence of a KI during the transitional period ending on 30 June 2012, the simplified prospectus must be attached to the file. This simplified prospectus (PS) must be the latest simplified prospectus visaed by the CSSF.
Latest Report	AR SR	The audited annual report (AR) or unaudited semi-annual report, if available. The most recent published reports must be attached.
Marketing arrangements	MP	This document is optional and provides additional information on the arrangements made for marketing the units of a UCITS in the case where the structure of the notification letter would not permit the internal methods of marketing to be reproduced exactly.

Confirmation of payment	CP	This document should only be annexed to the file for marketing applications in host Member States requiring confirmation of the payment of tax to which the UCITS is subject in the host Member State.

1.4. Processing of the notification file

For the purpose of ensuring that only complete and compliant notification documentation is submitted to a host Member State authority of a UCITS, the notification procedure, as implemented by the CSSF, provides for the notification files, to be subject to a number of formal verifications upon receipt by the CSSF. An indicative table of the formal verification rules to which the notification file is subject upon receipt by the CSSF is provided in Annex 5. These rules may be adapted by the CSSF without reiteration of this Circular.

Where the CSSF notices, following the formal verification upon receipt of the file, that the file is incomplete or does not comply with the relevant technical requirements, the UCITS shall be informed, through the same communication channel it used for submitting the notification file to the CSSF, of the reason(s) preventing the submission of the file to the competent authorities of the relevant host Member State. It is then the responsibility of the UCITS to submit a new notification file duly completed and corrected in respect of the deficiencies which resulted in its rejection.

If a host Member State authority does not, for any reason, accept a notification file submitted by the CSSF, the UCITS shall be informed of the reason(s) of refusal through the same communication channel it used for submitting the file to the CSSF. It is then the responsibility of the UCITS to submit a new notification file to the CSSF duly completed and corrected in respect of the relevant deficiencies.

As part of the processing of the file, it is verified, amongst other, that the UCITS attestation issued by CSSF, the visaed prospectus, the management regulations or the articles of incorporation, the Key Investor Information Documents and the financial reports contained in the notification file, are fully consistent with the electronic versions of these documents in possession of the CSSF. In order to be able to apply the controls referred to above, the CSSF must therefore be, at all times, in possession of the latest electronic versions of the PC, MR or AI, KI, AR and SR documents.

In this context, the CSSF would like to draw the attention of the persons responsible for the UCITS to the fact that the MR or AI and KI documents are currently not at the disposal of the CSSF in electronic form. We therefore request the persons responsible for the UCITS to organise the electronic submission to the CSSF of the latest versions of the relevant documents at their earliest convenience and, in any case, to ensure the filing of these documents prior to the submission of a notification file to the CSSF.

The methods for the submission of an electronic version of the documents to the CSSF are set out under item 1. of CSSF Circular 08/371. For the purposes of collecting the MR or AI and KI documents, the nomenclature described under item 2. of CSSF Circular 08/371 has been extended and adapted as set out in Annexes 2 and 3. However, the former nomenclature described under item 2. of CSSF Circular 08/371 remains valid until 30 June 2012.

2. UCITS established in another Member State which intend to market their units in Luxembourg

If a UCITS established in another Member State intends to market its units in Luxembourg, the UCITS must ensure that the CSSF receives the documentation referred to in paragraphs (1) and (2) of Article 93 of the UCITS Directive as well as an attestation that the UCITS fulfils the

conditions imposed by the UCITS Directive from the competent authorities of the home Member States.

However, in the event of an amendment having an impact on the notification letter sent to the CSSF at the time when the UCITS intends to market its units in Luxembourg or of a change of the share classes to be marketed in Luxembourg, the UCITS shall directly inform the CSSF before implementing this amendment.

Complete information about the legal, regulatory and administrative provisions specifically applicable to the marketing arrangements of the units of UCITS in Luxembourg are available on the website of the CSSF under the section Investment Funds > Marketing of units/shares of an EU undertaking for collective investment in transferable securities (UCITS) in Luxembourg.

Annexes: 5

Annex 1:

Notification package and notification systems

1) General information on the notification package and notification system

1.1. Notification package

"Notification package" means a .zip file which

- complies with the standard for .zip files established in CSSF Circular 08/334 (see descriptive and technical details in Annex 2, item 2. and Annex 3, item 2., respectively)

- contains the notification documents listed under item 1.3. of this Circular and which complies with the naming conventions defined in Annex 2, item 1. and Annex 3, item 1., respectively.

1.2. Notification systems

A notification system is an infrastructure for submission of notification packages to the CSSF that **only a channel operator 08/334 or the CSSF** itself has the right to propose. Such a system can have two operating modes:

a) **transport notification system**: in this case, the system only transmits to the CSSF notification packages which are entirely generated by the applicant or its duly authorised remitter;

b) **notification system** with **generation**: in this case, the notification system supports the user in the preparation of the notification packages, and in particular of the two versions of the notification letter which are detailed in Annex 4 of this Circular. In this respect, it may be based on the input of the remitter and the content of its systems.

2) Notification systems accepted by the CSSF

2.1. Systems based on the channels pursuant to CSSF Circular 08/334

The notification channels operate on the basis of channel infrastructures relating to CSSF Circular 08/334, but **do not use registration of certificates, electronic signatures and encryption mechanisms**. However, they use other features of these channels, such as the contract concluded between the applicant and the channel operator, the management of the user accounts by the operator, the transmission and verification of the naming conventions.

The channels can operate in two different ways:

a) "Generation" notification channel

This refers here to transmission channels 08/334 in "notification system with generation" mode. These channels support the applicant in the generation of the XML and PDF versions of the notification letter and in the composition of the notification package.

The login used in the notification system is accepted by the CSSF as a signature, as provided for in part C of Annex I of Commission Regulation (EU) No. 584/2010 dated 1 July 2010.

b) "Transportation" notification channel

This refers to a transmission channel 08/334 in "transportation notification system" mode.

The login used in the notification system is accepted by the CSSF as a signature on the notification letter; the letter itself needs not to be signed in this case.

2.2. Direct filing with the CSSF

This refers to a transportation notification system which enables the applicant to download the notification package directly on the CSSF website. This can be done through the following URL:

To register: http://register.cssf.lu

To submit a notification package http://upload.cssf.lu

The CSSF only recommends the use of this channel for small-sized entities with low frequencies which face difficulties in accessing the system of 08/334 channels. Consequently, volumetric restrictions are provided for therein.

This canal is used in the following manner:

- generation of the notification package by the UCITS
- registration of an e-mail address in the aforementioned URL form which enables the CSSF to communicate the notification results to the UCITS
- The CSSF returns an e-mail to this address with a link which allows access to the filing system; this access is valid for a limited period.
- The applicant can then download its notification package(s), provided that the name of each package is different and complies with the naming convention.

3) CSSF return files

There will be three types of CSSF return files:

Code	XML Schema	Content
NOTFBR	FileAcknowledge	Standard acknowledgement of receipt of 08/334 channels (this file will be returned only at the level of 08/334 channels, not at the level of the web filing which has its own mechanisms). Only the first step (verification of the naming convention of the submitted package) will depend on the submitted file, the three other steps (Authentication, Signature, Decryption) will automatically have the result 'A' (Accepted) because these mechanisms are not applicable for notifications.
NOTFDB	notificationreply	This type of return will be generated by the CSSF following the analysis of the notification file by the CSSF. This file is generated by the CSSF after either:

		– the proper performance of all the **automated** and **manual** tests of the CSSF. The tag <CSSF_Reply> / <CSSF_Status> will then contain: "**Accepted by CSSF**". In parallel, the CSSF will send the notification package to the authority of the relevant Member State of the European Union – failure of at least one **automated** or **manual** test of the CSSF and thus the rejection of the notification package by the CSSF. The tag <CSSF_Reply> / <CSSF_Status> will then contain "Technical verification failed" (failure of the automated rules) or "**Rejected by CSSF**" (CSSF refusal due to the results of the manual verification) and informs the UCITS that the CSSF has not forwarded the notification application to the authorities of the relevant Member State of the European Union; a new notification package is then to be sent. One or several error messages relating to the automated tests (<CSSF_Reply> / <Verification_Results>) or a message stating that one (or several) manual test(s) failed (<CSSF_Reply> / </Message>) will inform the UCITS of the reasons for the failure of its package.
NOTFBH	notificationreply	This type of return will be generated by the CSSF following the analysis and the refusal of the notification file by the authorities of the Member State of the European Union in which the UCITS wishes to market its units and on the basis of its return to the CSSF. The structure <Host_Reply> / <Host_Status> will then contain the status "Rejected by host". The tag <Host_Reply> / <Message> will then contain more information on the reasons for the refusal by the relevant authority.

A **NOTFDB** return file will, **in any case**, be returned to the UCITS. A **NOTFBH** file will **only** be returned **in case of refusal by the relevant authority**.

Consequently, XML schemas will be published on www.cssf.lu under the heading Legal Reporting / File Transport and Data Protection.

The returns are made as follows

Channel	Return by	Practical arrangements in respect of the return
08/334	Channel	Return by channel
Website filing www.cssf.lu	e-mail	return to an e-mail address to be entered (in duplication) at the filing

Annex 2:

Description of the nomenclature to be complied with for the transmission of zip files and documents contained therein

1) Details on the nomenclature used for documents

All the documents below are to be sent in PDF-text format. The files must comply with the following nomenclature:

1.1. Notification letter

DOCREP-ONNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-LN-LL-0000.pdf

LN for Notification Letter

The notification letters submitted via a channel which is accepted pursuant to the provisions of CSSF Circular 08/334 do not need to be signed electronically as the identification of the applicant has already been made by the channel operator.

From 1 July 2011, the notification letter must also by attached in XML format (see Annex 3).

1.2. Prospectus

The prospectus, visaed by the CSSF, must be sent using the following nomenclature:

DOCFDB-ONNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-PC-LL-0000.pdf

where

DOCFDB	designates	the identifier of the delivery type of a document visaed by the CSSF (constant)
O		the letter identifying the UCIs
NNNNNNNN		the identification number of the UCI (preceded by 0 when the number has less than 8 digits
CCCCCCCC		the identification number of the compartment (preceded by 0 when the number has less than 8 digits
PPPP		the identification number of the type of units (preceded by 0 when the number has less than 4 digits
YYYY*		the year (of the prospectus)*
MM*		the month (of the prospectus)*
DD*		the day (of the prospectus)*
PC		Prospectus
LL		the code of the language in which the prospectus is established

0000		corresponds to the basic document (constant)

*The date YYYY-MM-DD indicates the date of the prospectus and not the date on which it is sent

Particular cases:

When it is a classic UCI without any sub-funds CCCCCCCC=00000000

When a full prospectus covers more than one sub-fund CCCCCCCC=00000000

When a full prospectus covers more than one type of units PPPP=0000

1.3. The Key Investor Information Document

This document must be sent under the following nomenclature:

DOCREP-ONNNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-KI-LL-0000.pdf

(non-visaed version)

where

DOCREP is the identifier of the delivery type of a document which has not been visaed by the CSSF (constant) and

KI for Key Investor Information Document

1.4. Annual Report

DOCREP-ONNNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-AR-LL-0000.pdf

AR for Annual Report

1.5. Semi-Annual Report

DOCREP-ONNNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-SR-LL-0000.pdf

SR for Semi-Annual Report

1.6. Constitutional Documents

DOCREP-ONNNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-MR-LL-0000.pdf

MR for Management Regulations of UCITS which have adopted the form of a common fund in the consolidated version (one single document)

DOCREP-ONNNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-AI-LL-0000.pdf

AI for Articles of Incorporation of UCITS which have adopted the corporate form in the coordinated version (one single document)

1.7. CSSF Attestation

The last attestation issued by the CSSF (in principle, the one issued together with the latest visaed prospectus) must be sent under the following nomenclature:

DOCFDB-ONNNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-AT-LL-0000.pdf

AT for Attestation

1.8. Confirmation of Payments

DOCREP-ONNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-CP-LL-0000.pdf

CP for Confirmation of Payment. (Optional document according to the Member State of the European Union)

1.9. Marketing Provisions

DOCREP-ONNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-MP-LL-0000.pdf

MP for Marketing Provisions for the Member State of the European Union in which the UCITS wishes to market its units.

1.10. Simplified Prospectus

The simplified prospectus visaed by the CSSF must, where appropriate, be sent under the following nomenclature:

DOCFDB-ONNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-PS-LL-0000.pdf

PS for Simplified Prospectus

2) Details on the nomenclature used for zip files

For each Member State of the European Union in which the UCITS intends to market its units, a complete file (a "package") is to be prepared and sent to the CSSF. This package (zip file) must contain all the documents required for that Member State and each document must comply with the nomenclature referred to in paragraph 1). This zip file must comply with the following nomenclature:

NOTREP-ONNNNNNNN-LU-HH-INI-YYYYMMDDHHMMSS.zip

NOTREP is a constant which identifies the type and direction of the file

O is the letter which identifies the UCITS

NNNNNNNN is the identification number of the UCITS (preceded by 0 when the number has less than 8 digits

LU for Luxembourg

HH is the ISO code for the Member State of the European Union of marketing for which the file is intended

INI is the constant for initial notification

YYYYMMDDHHMMSS date, hour, minute, second of the creation of the zip file

A file using a name which has already been used before shall be rejected; when a correction is sent, the creation date must then be adapted.

Annex 3:

Table of technical specifications of the nomenclature used for the documents and the zip file to be transmitted

This chapter sets out the nomenclature conventions described in descriptive form in Annex 2.

1) Details on the nomenclature used for documents within a zip file

Format:

TYRDIR-ENNNNNNNN-CCCCCCCC-PPPP-YYYY-MM-DD-DO-LL-IIII.ext

Meaning:

Code	Meaning	Structure	Authorised values
TYR	Reporting type	Char(3)	'DOC' for "Non-structured documents"
DIR	Direction	Char(3)	'REP' for Report → file to CSSF 'FDB' for Feedback → CSSF feedback on the document received (only if such feedback is defined in a CSSF Circular; currently the prospectuses and attestations; documents which a UCITS is required to send back, in the notification package, the documents that have been previously sent to it within the context of Circular 08/371 procedures)
E	Type of entity	Char(1)	Constant 'O' for UCI
NNNNNNNN	Identification number of the UCITS	Number(8)	00000001…99999999 (CSSF identifier of the UCITS)
CCCCCCCC	Compartment number	Number(8)	00000001…99999999 for an entity with compartments, '00000000' for an entity without compartment '00000000' is also to be used when a document covers more than 1 compartment

PPPP	Type of unit	Number(4)	0001…9999 for an entity with compartments and types of units, 0000' is to be used when a document covers more than 1 type of unit
YYYY	Year	Number(4)	Year
MM	Month	Number(2)	Month
DD	Day	Number(2)	Day (YYYYMMDD: the reference date of the document and not the date on which it is sent should be indicated)
DO	Type of document	Char(2)	Code with two digits mentioned in the relevant CSSF Circular Examples: For UCITS IV 'PC' for "Full Prospectus" 'PS' for "Simplified Prospectus" 'KI' for "Key Investor Information Document" 'AI' for "Articles of Incorporation" 'MR' for "Management Regulations" 'LN' for "Notification Letter" 'AR' for "Annual Report" 'SR' for "Semi-Annual Report" 'AT' for "CSSF Attestation" 'CP' for "Confirmation of Payment" 'MP' for "Marketing Method" Others: …
LL	Language of the document	Char(2)	Language Code ISO 639-1 (alpha-2) e.g. en=English, fr=français, de=deutsch, lu=luxembourgeois*,
IIII	Annex Number	Number(4)	'0000' – Main document The value of the annex is constant '0000' (Main document without attached files) for all the documents constituting part of a notification

.ext	Extension	Char(5)	'.pdf' (PDF)

*The French version of this Circular contains a typo and refers to "lb".
Example:

DOCREP-O00000001-00000000-0000-2009-12-31-AR-DE-0000.pdf

Annual Report in German for UCI no. 1 with the reference date "31 December 2009"

DOCFDB-O00000998-00000000-0000-2009-12-31-PC-DE-0000.pdf

Prospectus in German for UCI no. 998 with the reference date "31 December 2009", signed and visaed (thus returned to the UCI) by the CSSF.

2) Details on the nomenclature used for zip files

Format:

TYRDIR-ENNNNNNNN-CC-HH-TTT-YYYYMMDDHHMMSS.ext

Meaning:

Code	Meaning	Structure	Authorised values
TYR	Reporting type	Char(3)	'NOT' for "UCITS IV Notifications"
DIR	Direction	Char(3)	'REP' for Report → file to CSSF 'FBR' for Feedback on Reception → acknowledgment of receipt CSSF 'FDB' for Feedback → CSSF feedback on the document received (only if such feedback is defined in a CSSF Circular) 'FBH' for Feedback following feedback of the competent authorities of the host Member State of the European Union → CSSF feedback to the UCITS in the case of a notification rejection by an authority
-	Separator	Char(1)	Constant '-'
E	Type of entity	Char(1)	'O'
NNNNNNNN	Identification number of the UCITS	Number(8)	00000001…99999999 (CSSF identifier of the UCITS)
-	Separator	Char(1)	Constant '-'
CC	Home – Nationality of the UCITS	Char(2)	Constant 'LU'

-	Separator	Char(1)	Constant '-'
HH	Host – Country of marketing	Char(2)	ISO 3166-1-alpha-2 code
-	Separator	Char(1)	Constant '-'
TTT	Type of notification	Char(3)	'INI' – initial notification 'UPD' – update notification (currently not used)
-	Separator	Char(1)	Constant '-'
YYYYMMDDHHMMSS	Creation date of the file	Number(14)	
.ext	Extension	Char(4)	'.zip' (ZIP Archive) for REP '.xml' (XML) for FBR, FDB and FBH

Example:

NOTREP-O00000003-LU-DE-INI-20100101160000.zip

Initial notification for the marketing of the Fund O00000003 (for the UCITS or part of the compartments/types of units) in Germany created on 1 January 2010 at 4 p.m.

Note:

Only 'INI' notifications are currently possible.

Annex 4:

Format and mapping of the notification letter

1) General information

A notification package must contain the notification letter in the two following formats:

- in XML format as an instance of the "notifletter.xsd" schema. The XML schema described is published on www.cssf.lu under the heading Legal reporting / File transport and Data protection.

- in PDF format exactly replicating the template published by the Commission in one of the following lan§guages DE, FR, EN, as defined in the table below

Language	URL	Pages
DE	http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:176:FULL:DE:PDF	L 176/22 – L 176/25
FR	http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:176:FULL:FR:PDF	L 176/22 – L 176/25
EN	http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:176:FULL:EN:PDF	L 176/22 – L 176/25

The UCITS is fully responsible for the consistency of the XML and PDF versions of the notification letter. The XML version should first be generated in the target languages and then the PDFs should be issued with the following mapping indications (in English).

2) General mapping XML → PDF

NOTIFICATION LETTER

(Article 1 of Commission Regulation (EU) no 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between the competent authorities (OJ L176, 10.7.2010, p.16)

NOTIFICATION OF INTENTION TO MARKET UNITS OF UCITS

IN ***<Notification>/<Host> --> see special treatment>***

(the host Member State)

PART A

Name of the UCITS: ***<UCITS>/<Name>***

UCITS home Member State: ***<Notification>/<Host> --> see special treatment>)***

Legal form of the UCITS (please tick appropriate one box)

☐ common fund ***tick if <UCITS>/<Legal_Form>="COMMON_FUND"***

☐ unit trust ***tick if <UCITS>/<Legal_Form>="UNIT_TRUST"***

☐ investment company ***tick if <UCITS>/<Legal_Form>="INVESTMENT_ COMPANY"***

Does the UCITS have compartments? YES NO

tick according to value of <UCITS>/<Multi_Compartment_Flag>

In case <UCITS>/<Multi_Compartment_Flag>=true:

Name of the UCITS and/or compartment(s) to be marketed in the host Member State	Name of share class(es) to be marketed in the host Member State[1]	Duration[2]	Code numbers[3]
<UCITS>/<Name>	***<Attachment>/<Referred_Substructures>/<Subfund>/<Share>/<Name>***	***Attachment>/<Referred_Substructures>/<Subfund>/<Share>/<Duration>***	***"HOME:"*** ***<UCITS>/<ID>/<Value>"/"<Attachment>/<ReferredSubstructures>/<Subfund>/<ID>/<Code>"/"<Attachment>/<ReferredSubstructures>/<Subfund>/<Share>/<ID>/<Code>(*) "ISIN:"*** ***<Attachment>/<ReferredSubstructures>/<Subfund>/<Share>/<ID>/<Code>(**)***

(*): for <Type>Home</Type>

(**): for <Type>ISIN</Type>

In case <UCITS>/<Multi_Compartment_Flag>=false:

Name of the UCITS and/or compartment(s) to be marketed in the host Member State	Name of share class(es) to be marketed in the host Member State[4]	Duration[5]	Code numbers[6]
<UCITS>/<Name>	***<Attachment>/<Referred_Substructures>/<Share>/<Name>***	***Attachment>/<Referred_Substructures>/<Share>/<Duration>***	***"HOME:"*** ***<UCITS>/<ID>/<Value>"/"<Attachment>/<ReferredSubstructures>/<Subfund>/<ID>/<Code>"/"<Attachment>/<ReferredSubstructures>/<Subfund>/<Share>/<ID>/<Code>(*) "ISIN:"*** ***<Attachment>/<ReferredSubstructures>/<Subfund>/<Share>/<ID>/<Code>(**)***

1 If the UCITS intends to market only certain share classes, it should list only those classes

2 If applicable

3 If applicable (e.g. ISIN)

4 If the UCITS intends to market only certain share classes, it should list only those classes

5 If applicable

6 If applicable (e.g. ISIN)

(*): for <Type>Home</Type>

(**): for <Type>ISIN</Type>

Name of the management company/ self-managed investment company

<Management_ Company>/<Name>

Management company's home Member State: ***<Management_Company>/<Country> -- >see special treatment***

Address and registered office/domiciled if different from address

<Management_Company>/<Address>

Details of management company's website: ***<Management_Company>/<Website>***

Details of contact person at the management company

While more <Contact> are in the XML:

Name / Position: ***<Contact>/<Name>"("<Contact>/<Position>")"***

Telephone number: ***<Contact>/<Phone>***

E-mail address: ***<Contact>/<Fax>***

Fax number: ***<Contact>/<Email>***

End while

Duration of the company, if applicable: ***<Management_Company>/<Duration>***

Scope of activities of the management company in the UCITS host Member State

See subchapter "Activities"

Additional information about the UCITS (if necessary)

<Additional_Info>

Attachments:

1) The latest version of the fund rules or instrument of incorporation, translated if necessary in accordance with Article 94(1) (c) of Directive 2009/65/EC.

<Attachment>/<Document_Name> of type AI or MR (one or more)

(Title of document(s) or name of electronic file(s) attachment)

2) The latest version of the prospectus, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

<Attachment/>/<Document_Name> of type PC (one or more)

(Title of document(s) or name of electronic file(s) attachment

3) The latest version of the key investor information, translated if necessary in accordance with Article 94(1)(b) of Directive 2009/65/EC

<Attachment/>/<Document_Name> of type KI or PS (one or more)

(Title of document(s) or name of electronic file(s) attachment)

4) The latest published annual report and any subsequent half-yearly report, translated if necessary in accordance with article 94(1) c) of Directive 2009/65/EC.

<Attachment>/<Document_ Name> of type AR or SR (one or more)

Title of document(s) or name of electronic file(s) attachment

Note:

The latest versions of the required documents listed above must be attached to this letter for onward transmission by the competent authorities of the UCITS home Member State, even if copies have previously been provided to that authority. If any of the documents have previously been sent to the competent authorities of the UCITS host member State and remain valid, the notification letter may refer to that fact.

Indicate where the latest electronic copies of the attachments can be obtained in future:

<Notification>/<Update_Info>

Part B

The following information is provided in conformity with the national laws and regulations of the UCITS host Member State in relation to the marketing of units of UCITS in that Member State.

UCITS shall refer to the website of the competent authorities of each Member State for details of which items of information shall be provided in this section. A list of relevant website addresses is available at www.cesr.eu

1. Arrangements made for marketing of units of UCITS

Units of the UCITS/UCITS compartments will be marketed by:
<Marketing_Arrangements> (see also example below)

☐ the management company that manages the UCITS
Tick if <Ucits_ Management_ Company>true<Ucits_ Management_ Company>

☐ any other management company authorised under Directive 2009/65/EC
Tick if <Other_ Management_ Company>true<Other_ Management_ Company>

While more <Listing> tags with non-empty content exist under <Other_Management_Company>, add the following line to the numbered list of the PDF:
n) "Other management companies:" Content of tag <Listing>

☐ credit institutions
Tick if <Credit_Institutions>true<Credit_Institutions>

While more <Listing> tags with non-empty content exist under <Credit_Institutions>, add the following line to the numbered list of the PDF:
n) "Credit institutions: " Content of tag <Listing>

☐ authorised investment firms or advisers
Tick if <Investment_ Firms _ Advisors>true<Investment_ Firms_Advisors>

While more <Listing> tags with non-empty content exist under <Investment_Firms_Advisors>, add the following line to the numbered list of the PDF:
n) "Authorised investment firms or advisers:" Content of tag <Listing>

☐ other bodies
Tick if <Other_Bodies>true<Other_Bodies>

While more <Listing> tags with non-empty content exist under <Other_Bodies>, add the following line to the numbered list of the PDF:
n) "Other Bodies:" Content of tag <Listing>

2. Arrangements for the provision of facilities to unit-holders in accordance with Article 92 of Directive 2009/65/EC: ***<Unitholders_ Facilities_Info>***

While more <Paying_ Agent> are in the XML

Details of paying agent (if applicable): ***<Paying_ Agent>***

Name: ***<Name>***

Legal form: ***<Legal_Form>***

Registered office: ***<Registered_ Office>***

Address for correspondence (if different): ***<Address_ Of_Correspondence>***

End While

Details of any other person from whom investors may obtain information and documents:

While more <Further_Info_And_Docs> are in the XML:

Name: ***<Name>***

Address: ***<Address>***

End While

Manner in which the issue, sale, repurchase or redemption price of units of UCITS will be made public
<Publication>

3. Other information required by the competent authorities of the host Member State in accordance with Article 91(3) of Directive 2009/65/EC <Other_ Info>

Include (if required by UCITS host Member State)

☐ details of any additional information to be disclosed to unit-holders or their agents; ***tick if tag <Additional_Info> delivered***

☐ in case a UCITS makes use of any exemptions from rules or requirements applicable in the UCITS host Member State in relation to marketing arrangements for the UCITS, a specific share class or any category of investors, details of the use made of such exemptions; ***tick if tag <Exemptions> delivered***
<Additional_Info> followed by <Exemptions>

If required by the UCITS host Member State, evidence of payment due to the competent authorities of the host Member State
<Evidence_Payment>

PART C

Confirmation by the UCITS

We hereby confirm that the documents attached to this notification letter contain all relevant information as provided for in Directive 2009/65/EC. The text of each document is the same as that previously submitted to the competent authorities of the home Member State, or is a translation that faithfully reflects that text.

(The notification letter shall be signed by an authorised signatory of the UCITS or a third person empowered by a written mandate to act on behalf of the notifying UCITS, in a manner which the competent authorities of the UCITS home Member State accept for certification of documents. The signatory shall state his/her full name and capacity, and shall ensure the confirmation is dated.)

_____

3) Activities

Remark: this gives the exemplary treatment for the EN version; please refer to chapter G "Reference tables" for DE and FR translations

If ***<Standard>true<Standard>***

Then add the following line to the field "Activities" of the PDF:

Activity of collective portfolio management (investment management, administration, marketing according to article 6(2) of Directive 2009/65/EC)

If ***<Discretionary_Management>true<Discretionary_Management>***

Then add the following line to the field "Activities" of the PDF:

Management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis (article 6(3) a) of Directive 2009/65/EC)

If ***<Investment_Advice >true<Investment_Advice>***

Then add the following line to the field "Activities" of the PDF:

Investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC (article 6(3) b) (i) of Directive 2009/65/EC)

If ***<Safekeeping_ And_ Administration>true<Safekeeping_And_ Administration>***

Then add the following line to the field "Activities" of the PDF:

Safekeeping and administration in relation to units of collective investment undertakings (article 6(3) b) (ii) of Directive 2009/65/EC

Then add the content of tag <Other_Details_ On_Activities> to the field "Activities" of the PDF.

Example: the XML

<Activities_In_Host_State>

<Standard>true</Standard>

<Discretionary_Management>true</Discretionary_Management>

<Investment_Advice>false</Investment_Advice>

<Safekeeping_And_Administration>false</Safekeeping_And_Administration>

<Other_Details_On_Activities>We plan to add Investment advice within 6 months</Other_Details_On_Activites>

</Activities_In_Host_State>

Should give in PDF:

Scope of activities of the management company in the UCITS host Member State

Activity of collective portfolio management (investment management, administration, marketing according to article 6(2) of Directive 2009/65/EC)

Management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis (article 6(3) a) of Directive 2009/65/EC)

We plan to add Investment advice within 6 months

4) Marketing arrangements

Example: the XML

```
<Marketing_Arrangements>
    <Ucits_Management_Company>true</Ucits_Management_Company>
    <Credit_Institutions>
    <Listing>Bank 1, Main Road 16, NY, US</Listing>
    <Listing>Bank 2, Main Road 17, Mockba, RU</Listing>
    <Credit_Institutions>
    <Other_Bodies>
    <Listing>Body 1, Main Road 16, NY, US</Listing>
    <Listing> Body 2, Main Road 16, London, UK</Listing>
    </Other_Bodies>
<Marketing_Arrangements>
```

Should give in PDF:

4. Arrangements made for marketing of units of UCITS

Units of the UCITS/UCITS compartments will be marketed by:

☒ *the management company that manages the UCITS*

☐*any other management company authorised under Directive 2009/65/EC*

☒*credit institutions*

☐*authorised investment firms or advisers*

☒ *other bodies*

1) Bank 1, Main Road 16, NY, US

2) Bank 2, Main Road 17, Mockba, RU

3) Body 1, Main Road 16, NY, US

4) Body 2, Main Road 16, London, UK

5) Special treatments

<Notification>/<Home>	In the human-readable PDF version this should be converted into the **full official name of the country in the destination language of the notification letter**
<Notification>/<Host>	In the human-readable PDF version this should be converted into the **full official name of the country in the destination language of the notification letter**
<Management_Company>/ <Country>	In the human-readable PDF version this should be converted into the **full official name of the country in the destination language of the notification letter**

6) Reference tables

6.1. Activities of management companies:

XML code	Text in PDF
DEFAULT	Activity of collective portfolio management (investment management, administration, marketing according to article 6(2) of Directive 2009/65/EC)
DISCRETIONARY_MANAGEMENT	Management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis (article 6(3) a) of Directive 2009/65/EC)
INVESTMENT_ADVICE	Investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC (article 6(3) b) (i) of Directive 2009/65/EC)
SAFEKEEPING_AND_ADMINISTRATION	Safekeeping and administration in relation to units of collective investment undertakings (article 6(3) b) (ii) of Directive 2009/65/EC

6.2. Country codes to use in special treatments

Country name	
Belgium	BE
Bulgaria	BG
Czech Republic	CZ
Denmark	DK
Germany	DE
Estonia	EE
Ireland	IE
Greece	EL
Spain	ES
France	FR
Italy	IT
Cyprus	CY
Latvia	LV
Lithuania	LT
Luxembourg	LU
Hungary	HU
Malta	MT
Netherlands	NL
Austria	AT
Poland	PL
Portugal	PT
Romania	RO
Slovenia	SI
Slovakia	SK
Finland	FI
Sweden	SE
United Kingdom	UK

7) Supplementary attachments not visible under PDF

5) Attestation

<Attachment>/<Document_Name> of type AT (one or more)

Title of document(s) or name of electronic file(s) attachment

6) Other attachments (Confirmation of payment "CP", Marketing Provisions "MP", Management regulations "MR"…) ***<Attachment>/<Document_Name> of types MP, CP, MR, ….***

Title of document(s) or name of electronic file(s) attachment

8) General remark on the fields "CCCCCCCC" and "PPPP" in the notification letter in XML format

Field	Value	iMeaning
CCCCCCCC	<> 00000000	- the UCI is a UCI with compartments and the document relates to **the compartment CCCCCCCC** to be specified in the XML notification letter under <Referred_Substructures>
CCCCCCCC	=00000000	- UCI without compartments - the UCI is a UCI with compartments and the document relates to a **subset of the compartments** to be specified in the XML notification letter under <Referred_Substructures>
PPPP	<>0000	- the document relates **to the PPPP** part to be specified in the XML notification letter under <Referred_Substructures>
PPPP	=0000	- the document relates **to a subset of units** to be specified in the XML notification letter under <Referred_Substructures>

- In the event where a document **relates to the UCI as a whole** (e.g. the full prospectus PC, the attestation AT or the notification letter LN), the optional structures **<Referred_Substructures> must not be indicated**

Annex 5:

Table of formal verification rules of the CSSF applied to "initial" notifications

Important note: This list shows the rules in force at the time of the publication of this Circular. It is merely indicative and the CSSF reserves the right to amend the verification rules (e.g. change the severity) without prior notice and without updating this document.

1) Zip file: Antivirus Check

2) Zip file: Compliance with Nomenclature and Verification of the existence of exactly one .zip file

3) Documents contained in the Zip: Compliance with the Nomenclature

4) Verification that all the documents contained in the zip refer to one single UCITS

5) Attestation must be the **latest** version delivered and must bear the signature of the CSSF

6) Full Prospectus in EN, FR and DE must be the **latest** visaed version and must bear the signature of the CSSF

7) The date of KI documents in the notifications submitted after 35 working days following the 31 December of a year must include a reference date of the current year

8) The date of KI documents in the notifications submitted within the first 35 working days following the 31 December of a year must include a reference date of the current or the preceding year

9) Verification of the uniqueness of the documents. The same document is accepted in different languages but not in one language with different dates

10) Verification of the languages of the documents with the languages allowed by the relevant marketing Member State of the European Union

11) Verification whether the UCITS, the compartment(s) and the type(s) of units exist and are open in the databases of the CSSF

12) Verification whether the UCITS is governed by Community law, at the time of the notification

13) Verification that, on the date of the prospectus and the Key Investor Information Documents, the UCITS is governed by Community law

14) Verification that the ZIP file contains at least the following documents:

- an LN (notification letter)
- a PC (full prospectus) bearing the electronic signature of the CSSF
- a KI (Key Investor Information Document) or (during the transitional phase) a PS (simplified prospectus)
- MR (management regulations for common funds) or AI (articles of incorporation for corporate UCITS)
- an AT (certificate) bearing the electronic signature of the CSSF
- a CP (confirmation of payment) for the Member States of the European Union which require such a document

15) Verification that the files are viewable (without any password) and printable (securities settings of PDFs)

16) Verification that the Key Investor Information Document does not exceed three pages

17) Verification whether the documents are real pdf documents (and not *.doc or other renamed *.pdf documents)

18) Verification that the documents are in PDF-text format

19) Those UCITS existing for more than 22 months must enclose an AR (annual report)

20) The AR must not be older than 16 months

21) Those UCITS which have existed for more than 14 months must enclose an SR (semi-annual report) except if an AR is enclosed

22) Those UCITS which send an AR must also enclose an SR (semi-annual report) if the notification date > AR Date + 8 months

23) For notifications submitted on the website, verification whether the email address of the applicant is valid

24) During the period ending on 1 July 2011, verification whether the marketing Member State of the European Union has either transposed the Directive or is already ready to accept the inter-regulatory simplified notification procedure

25) Verification that the notification relates to a Luxembourg UCITS

26) Verification of the coherence of <*Multi_Compartment_Flag*> and <*Referred_Substructures*>

27) Verification of the coherence between the XML file, the file name and the database of the CSSF (Notification/Host, Notification/Type, UCITS/ID/Value, UCITS/ID/Value, UCITS/Legal_Form, UCITS/Multi_Compartment_Flag and Management_Company/ID/Value)

28) Verification for each <ID> of the XML, that the tag <type> with the value "HOME" appears exactly once

29) Verification that each file in the .zip is referenced **at least once** in the XML in the text area Attachment / Document_Name

30) Verification that each <Subfund> and each <Share> (whose HOME codes are different from 0) referenced in <attachments> exists in the internal data base of the CSSF and is open

31) Warning: if the CCCCCCCC part of the name of the file (different from 0) does not have the same value as the HOME Code of each <Subfund>

32) Warning: if the PPPP part of the name of the file (different from 0) does not have the same value as the HOME Code of each <Share>

33) Warning: Verification that all of the indicated ISIN code is the same as the one contained in the internal databases of the CSSF

34) The notification letter must be unique

35) An already existing file cannot be reintroduced in the base

21.

CSSF CIRCULAR 11/498

RELATING TO THE ENTRY INTO FORCE OF THE LAW OF 17 DECEMBER 2010 CONCERNING UNDERTAKINGS FOR COLLECTIVE INVESTMENT AND CSSF REGULATIONS NO. 10-4 AND NO. 10-5 LAYING DOWN THE IMPLEMENTING MEASURES IN RELATION THERETO; THE REGULATIONS (EU) NO. 583/2010 AND NO. 584/2010 OF THE EUROPEAN COMMISSION OF 1 JULY 2010 IMPLEMENTING DIRECTIVE 2009/65/EC AND THE GUIDELINES AND OTHER DOCUMENTS DRAWN UP BY THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS (CESR)

CSSF Circular 11/498 relating to the entry into force of the Law of 17 December 2010 concerning undertakings for collective investment and CSSF Regulations No. 10-4 and No. 10-5 laying down the implementing measures in relation thereto; the regulations (EU) No. 583/2010 and No. 584/2010 of the European Commission of 1 July 2010 implementing Directive 2009/65/EC and the guidelines and other documents drawn up by the Committee of European Securities Regulators (CESR)

Luxembourg, 10 January 2011

To all Luxembourg undertakings for collective investment and to those involved in the operation and control of these undertakings

CSSF CIRCULAR 11/498

Re:
- **Entry into force of the Law of 17 December 2010 concerning undertakings for collective investment and CSSF Regulations No. 10-4 and No. 10-5 laying down the implementing measures in relation thereto**
- **Regulations (EU) No. 583/2010 and No. 584/2010 of the European Commission of 1 July 2010 implementing Directive 2009/65/EC**
- **Guidelines and other documents drawn up by the Committee of European Securities Regulators (CESR)**

Ladies and Gentlemen,

We are pleased to draw your attention to the adoption of the Law of 17 December 2010 on undertakings for collective investment, as well as CSSF Regulations No. 10-4 and No. 10-5 laying down the implementing measures in relation thereto (all of which were published in the *Mémorial* A – No. 239 of 24 December 2010).

The Law of 17 December 2010 transposes into Luxembourg law Directive 2009/65/EC of the European Parliament and the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to certain undertakings for collective investment in transferable securities ("UCITS"). This new Law provides a series of changes to the Luxembourg legal framework of undertakings for collective investment ("UCI") and it incidentally amends the Law of 13 February 2007 on specialised investment funds, as well as the Law of 4 December 1967 on income tax.

CSSF Regulations No. 10-4 and No. 10-5 transpose into Luxembourg law (i) Directive 2010/43/EU of the European Commission of 1 July 2010 laying down the implementing measures of Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interest, business conduct, risk management and the content of the agreement between the depositary and the management company, and (ii) Directive 2010/44/EU of the European Commission of 1 July 2010 laying down the implementing measures of Directive 2009/65/EC of the European Parliament and the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure. These Regulations apply to management companies and UCITS respectively, which are subject to the Law of 17 December 2010 (the "new Law").

The new Law repeals the Law of 20 December 2002 on undertakings for collective investment (the "2002 Law") with effect from 1 July 2012, except for the tax provisions contained in Articles 127 and 129 which are repealed with effect from 1 January 2011.

The purpose of this Circular is to summarise (I) the structure of the new Law, (II) the principal innovations introduced by Directive 2009/65/EC and the new Law, as well as (III) the transitional provisions of the new Law.

In addition, this Circular also aims to draw your attention to other implementing measures of Directive 2009/65/EC (the so-called levels 2 and 3) i.e. (IV) to Regulations (EU) No. 583/2010 and No. 584/2010 of the European Commission of 1 July 2010 and (V) to the guidelines of the Committee of European Securities Regulators (CESR) concerning Directive 2009/65/EC.

I. Structure of the new Law

For the majority of the provisions, the new Law retains the text and wording of Directive 2009/65/EC as well as those provisions of the 2002 Law which are not affected by the Directive.

Generally, the new Law has the same structure as the 2002 Law:

1. Part I sets out the provisions applicable to UCITS. The new provisions introduced by Directive 2009/65/EC on the cross-border notification procedure of UCITS, UCITS mergers and master-feeder structures are integrated into this Part.

2. The rules applicable to other UCIs and to UCIs established and operating under a foreign law, Parts II and III of the new Law are to a large extent the textual reproduction of Parts II and III of the 2002 Law.

3. Part IV comprises all the rules applicable to management companies distinguishing, by analogy with the 2002 Law, management companies that manage UCITS and management companies whose business is limited to the management of other UCIs. The provisions applicable to management companies which manage UCITS take into account the substantial amendments introduced by Directive 2009/65/EC which give these management companies an EU passport allowing them to exercise in other Member States, through the free provision of services or by establishing a branch, the activities for which they have been authorised in their country of origin.

4. All common provisions applicable to UCITS and to other UCIs relating, in particular, to the authorisation, organisation of supervision and information from unitholders are in Part V of the new Law. Part V retains the provisions of Part V of the 2002 Law, subject to amendments and adaptations made in order to implement the new provisions introduced by Directive 2009/65/EC concerning key investor information, as well as cooperation between the supervising authorities. Part V also comprises changes to the powers of supervision and sanction vested in the Commission for the Supervision of the Financial Sector to perform its supervisory functions of UCIs. These changes reflect the provisions envisaged by Directive 2009/65/EC whose objective is to harmonise the powers available to the competent supervisory authorities to ensure a uniform application of the Directive in all the Member States. Provisions relating to tax, criminal law, and regarding the liquidation of UCIs, as well as provisions in relation to UCIs with multiple sub-funds, which are included in Part V of the new Law, are for the most part taken from the 2002 Law.

II. Main innovations

1. European passport for management companies

The passport for management companies constitutes the main innovation introduced by Directive 2009/65/EC. This passport shall allow the direct management of

Luxembourg UCITS by a management company established and supervised in another Member State of the European Union and *vice versa*.

2. New notification procedure

The notification procedure required for the marketing of units of a UCITS established in a Member State in another Member State has been simplified and accelerated. In future, the initial notification shall take the form of an electronic notification from one authority to another. Thus, the UCITS will have to submit a file to its home authority which will ensure that the file is complete and which will then send it to the competent authority of the host Member State not later than ten business days after receipt. However, any subsequent changes to relevant documents must be notified directly by the UCITS to the authority of the host Member State.

3. Cooperation between supervisory authorities

The new Law implements those elements of Directive 2009/65/EC which aim to align the rules by improving the existing mechanisms for exchanging information and by requiring deadlines for communication and requests between supervisory authorities.

4. Mergers of UCITS

The new Law introduces a procedure which aims to facilitate mergers of UCITS, whether domestic or EU cross-border. The conditions for obtaining authorisation for the merger of a UCITS and the information to be made available to investors will from now on be subject to uniform rules across the European Union. It is expected, in particular, that when the merger implies a vote of investors, the threshold for approving the merger shall not exceed 75% of the votes of those investors, both present and represented.

5. Master-feeder structures

Under the new Law, it will be possible for a (feeder) UCITS to invest 85% or more of its assets in another (master) UCITS, thereby creating a master-feeder structure. Both master-feeder structures, where the master and feeder UCITS are established in the same Member State, and those in which they are established in different Member States, will be possible.

6. Key information for investors

The simplified prospectus will be replaced by the concept of "key information for investors" which, it has been agreed, will be known as "Key Investor Information" ("KII"). It is a core document that provides investors with essential information about the UCITS in terms of investment objectives, risk profile, performance and costs. This document, to be written in a concise manner and in a non-technical language, shall be translated and used, without modification, in all the Member States where the UCITS is marketed.

7. Other changes (unrelated to the transposition of Directive 2009/65/EC)

The new Law also introduces certain specific changes to the existing legislation on UCIs, which are unrelated to the transposition of Directive 2009/65/EC. Other than some changes to the tax provisions, the most important modifications are the following:

- UCIs in the corporate form are exempt from the obligation to send their annual report to registered unitholders at the same time as the notice convening the annual general meeting;

- given the large number of subscriptions and redemptions and therefore changes in the register of unitholders to which a UCI in the corporate form may be subject, the notices convening general meetings may provide that the quorum and the majority at the general meeting are determined in relation to the units issued and outstanding on the fifth day preceding the general meeting;

- if the articles of incorporation of a UCI in the corporate form have been written in English, that UCI is exempt from the obligation of providing a French or German translation for the purpose of registering its articles of incorporation;

- in the interests of the protection of investors of a UCI subject to Part II of the 2002 Law, it is important that, when delegating functions to third parties, they benefit from protection similar to that given to investors of a UCITS subject to Part I. Thus, from now on, the manager of a UCI subject to Part II of the 2002 Law shall be subject to the authorisation of and supervision by a supervisory authority empowered to exchange information with the CSSF.

III. Transitory provisions

The new Law came into force on 1 January 2011.

Given that the new Law came into force prior to the deadline of 1 July 2011 for the transposition of Directive 2009/65/EC, the text of the new Law contains some transitional provisions of which the following are the most important:

- UCITS and management companies subject to Chapter 13 of the 2002 Law and established before the entry into force of the new Law (i.e. before 1 January 2011) have the option, until 1 July 2011, of remaining subject to the 2002 Law or to be subject to the new Law; from and including 1 July 2011 they shall *ipso jure* be governed by the new Law.

- UCITS and management companies subject to Chapter 13 of the 2002 Law and established between 1 January and 1 July 2011 have the option, until 1 July 2011, to be governed by the 2002 Law or the new Law; from 1 July 2011 they shall *ipso jure* be governed by the new Law;

- until 1 July 2011, UCITS subject to the 2002 Law shall benefit from a grandfather clause for the preparation of key information for those investors referred to in Article 159 of the new Law; thus, the current simplified prospectuses drawn up under the 2002 Law shall not be replaced by the Key Investor Information document until 1 July 2012;

- UCIs under Part II of the 2002 Law and management companies subject to Chapter 14 of the 2002 Law are *ipso jure* governed by the new Law as from 1 January 2011; however, they will have until 1 July 2012 to comply with the conditions of delegation of one or more of their functions to third parties as stated in Articles 95(2), 99(6), paragraph 2 and Article 125(1), paragraph 6, respectively, of the new Law;

- between 1 January and 1 July 2011, UCITS and management companies authorised in other Member States may rely on the provisions of the new Law in a cross-border situation only if the provisions of Directive 2009/65/EC have been implemented in their home State.

For UCIs and management companies incorporated under Luxembourg law existing on 1 July 2011 and which have until that date been subject to the 2002 Law, all references to the 2002 Law in the instruments of incorporation or management regulations, respectively, shall be deemed to be replaced by references to the new Law from this date.

IV. Regulations (EU) No. 583/2010 and No. 584/2010 of the European Commission

Regulations (EU) No. 583/2010 and No. 584/2010 of the European Commission of 1 July 2010 shall apply from 1 July 2011 and shall be directly applicable in the Member States of the European Union. These Regulations implement Directive 2009/65/EC as regards respectively, (i) key investor information and the conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website, and (ii) the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between the competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities. UCITS and management companies which choose to be subject to the new Law before 1 July 2011 shall already comply with these Regulations (EU) from the date on which they are subject to this Law.

The Regulations (EU) have been published in the official Journal of the European Union at the following address:
http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:176:SOM:EN:HTML

V. Guidelines of the Committee of European Securities Regulators (CESR)

Finally in this context, we wish to draw your attention to guidelines and other CESR documents concerning Directive 2009/65/EC:

- CESR Guidelines on a common definition of European money market funds (CESR/10-049 of 19 May 2010);
- CESR Guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (CESR/10-673 of 1 July 2010);
- CESR Guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document (CESR/10-674 of 1 July 2010);
- CESR Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788 of 28 July 2010);
- CESR Guidelines on the Selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (CESR/10-1318 of 20 December 2010);
- CESR Guidelines on the Transition from the Simplified Prospectus to the Key Investor Information document (CESR/10-1319 of 20 December 2010);
- CESR's guide to clear language and layout for the Key Investor Information document (CESR/10-1320 of 20 December 2010);
- CESR's template for the Key Investor Information document (CESR/10-1321 of 20 December 2010)

These documents are available for consultation on the website of the European Securities and Markets Authority ("ESMA", http://www.esma.europa.eu/), the newly created European supervision authority which succeeded CESR on 1 January 2011[1].

[1] Regulation (EU) No. 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European supervision authority (European Securities and Markets Authority). For information: "Frequently Asked Questions – A Guide to Understanding ESMA" (ESMA 2011/009) of 3 January 2011 can be found at the following address:
http://www.esma.europa.eu/popup2.php?id=7366.

22.

CSSF CIRCULAR 08/380

RELATING TO THE GUIDELINES OF THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS (CESR) CONCERNING ELIGIBLE ASSETS FOR INVESTMENTS BY UCITS

CSSF Circular 08/380 relating to the Guidelines of the Committee of European Securities Regulators (CESR) concerning eligible assets for investments by UCITS

Luxembourg, 26 November 2008

To all Luxembourg undertakings for collective investment in transferable securities ("UCITS") and to those involved in the operation and supervision of such undertakings

CSSF CIRCULAR 08/380

Re: Guidelines of the Committee of European Securities Regulators (CESR) concerning eligible assets for investments by UCITS

Ladies and Gentlemen,

We refer to CSSF Circular 08/339 on the guidelines of the Committee of European Securities Regulators (CESR) concerning eligible assets for investment by UCITS.

This circular draws the attention of UCITS subject to Part I of the amended law of 20 December 2002 relating to undertakings for collective investment to the publication of an amended version of the guidelines published by CESR known as *CESR's guidelines concerning eligible assets for investment by UCITS – March 2007 (updated September 2008), Ref.: CESR/07-044b*.

This document is attached hereto and is also available on CESR's website under the following link: http://www.cesr.eu.

Special attention should be paid to the fact that the only amendment to the document *CESR's guidelines concerning eligible assets for investment by UCITS* concerns paragraph 1 of point 24relating to the techniques and instruments for the purpose of efficient portfolio management. The relevant amended paragraph reads as follows:

"Techniques and instruments relating to transferable securities and money market instruments include, but are not limited to, collateral under the provisions of Directive 2002/47/EC on financial collateral arrangements, repurchase agreements, guarantees received, and securities lending. The requirement to comply with the provisions of Article 21 of Directive 85/611/EEC imply in particular that if UCITS are authorized to use repurchase agreements or securities lending, these operations must be taken into account to calculate the global exposure of the UCITS."

This document cancels and replaces the document *CESR's guidelines concerning eligible assets for investment by UCITS – March 2007, Ref.*: *CESR/07-044* published by the *Commission de Surveillance du Secteur Financier* (CSSF) through the abovementioned CSSF Circular 08/339.

ANNEX: *CESR's guidelines concerning eligible assets for investment by UCITS – March 2007, (updated September 2008), Ref.: CESR/07-044b.*

23.

CSSF CIRCULAR 08/356

RELATING TO THE RULES APPLICABLE TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT WHEN THEY EMPLOY CERTAIN TECHNIQUES AND INSTRUMENTS RELATING TO TRANSFERABLE SECURITIES AND MONEY MARKET INSTRUMENTS

CSSF Circular 08/356 relating to the rules applicable to undertakings for collective investment when they employ certain techniques and instruments relating to transferable securities and money market instruments

Luxembourg, 4 June 2008

To all Luxembourg undertakings for collective investment ("UCIs") subject to the amended Law of 20 December 2002 relating to undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings

CSSF CIRCULAR 08/356

Re: Rules applicable to undertakings for collective investment when they employ certain techniques and instruments relating to transferable securities and money market instruments

Ladies and Gentlemen,

The purpose of this circular is to clarify the conditions and limits under which an undertaking for collective investment in transferable securities ("UCITS") is authorised to employ techniques and instruments relating to transferable securities and to money market instruments. The techniques and instruments covered by this circular are securities lending transactions, sale with right of repurchase transactions[1] and reverse repurchase transactions/repurchase transactions[2].

The conditions and limits stated hereafter apply, in principle, also to other undertakings for collective investment ("UCIs").

These techniques and instruments must be used for the purpose of efficient portfolio management, which supposes that they must fulfil the following criteria:

a) they are economically appropriate in that they are realised in a cost-effective way;

b) they are entered into for one or more of the following specific aims:

   i) reduction of risk;

   ii) reduction of cost;

   iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules applicable to it;

c) their risks are adequately captured by the risk management process of the UCITS.

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1 *opérations à réméré*
2 *opérations de prise/mise en pension*

In no case may the use of these operations by the UCITS result in a change of its investment objectives as laid down in its management regulations/its constitutional documents, its prospectus, or result in additional risk higher than its risk profile as described in its sales documents.

When a UCITS wants to make use of the techniques and instruments described hereafter, it must mention this specifically in its prospectus. The prospectus must indicate the different types of transactions considered and clarify the purpose of these transactions as well as the conditions at and limits within which they are conducted. If the UCITS intends to reinvest cash received as a guarantee[3] as a result of its transactions, the UCITS' prospectus must specify the conditions and limits applicable to these reinvestments. If need be, the prospectus must contain a description of the risks inherent to the envisaged operations.

The UCITS must make sure that the principles of corporate governance comprise provisions, as regards the transactions referred to in this circular, for a period during which is held an annual shareholders' meeting of the issuing company of the securities lent or temporarily sold.

I. Techniques and instruments that may be used by UCITS

The techniques and instruments that may be used by UCITS are more fully described hereafter.

A. Securities lending transactions

A UCITS may enter into securities lending transactions provided it complies with the following rules:

1. Rules intended to ensure the proper completion of the securities lending transactions

- The UCITS may lend the securities included in its portfolio to a borrower either directly or through a standardised lending system organised by a recognised clearing institution or through a lending system organised by a financial institution subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law and specialised in this type of transactions.

  In all cases, the counterparty to the securities lending agreement (i.e. the borrower) must be subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law. In case the aforementioned financial institution acts on its own account, it is to be considered as counterparty in the securities lending agreement.

  If the UCITS lends its securities to entities that are linked to the UCITS by common management or control, specific attention has to be paid to the conflicts of interest which may result therefrom.

- The UCITS must receive, previously or simultaneously to the transfer of the securities lent, a guarantee which complies with the requirements expressed under section II b) of this circular. At maturity of the securities lending transaction, the guarantee will be remitted simultaneously or subsequently to the restitution of the securities lent.

[3] See footnote 8 below.

In case of a standardised securities lending system organised by a recognized clearing institution or in case of a lending system organised by a financial institution subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law and specialised in this type of transactions, securities lent may be transferred before the receipt of the guarantee if the intermediary in question assures the proper completion of the transaction. Such intermediary may, instead of the borrower, provide to the UCITS a guarantee in compliance with the requirements expressed under section II b) hereafter.

2. Limits to securities lending transactions

The UCITS must ensure that the volume of the securities lending transactions is kept at an appropriate level or that it is entitled to request the return of the securities lent in a manner that enables it, at all times, to meet its redemption obligations and that these transactions do not jeopardise the management of the UCITS' assets in accordance with its investment policy.

3. Periodical information of the public

In its financial reports, the UCITS must disclose the global valuation of the securities lent on the date of reference of these reports.

B. Sale with right of repurchase transactions

a) Purchase of securities with a repurchase option[4]

Acting as buyer, the UCITS may agree to purchase securities with a repurchase option. These transactions consist of the purchase of securities with a clause reserving for the seller (counterparty) the right to repurchase the securities sold from the UCITS at a price and time agreed between the two parties at the time when the contract is entered into.

Its involvement in such transactions is, however, subject to the following rules:

1. Rules intended to ensure the proper completion of the purchase with a repurchase option transactions

The UCITS may enter into these transactions only if the counterparties to these transactions are subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law.

2. Limits applicable to the purchase with a repurchase option transactions

During the duration of a purchase with a repurchase option agreement, the UCITS may not sell the securities which are the subject of the contract, before the counterparty has exercised its option or until the deadline for the repurchase has expired, unless the UCITS has other means of coverage.

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4 *achat de titres à réméré*

The UCITS must ensure to maintain the value of the purchase with repurchase option transactions at a level such that it is able, at all times, to meet its redemption obligations towards unitholders/shareholders.

Securities that are the subject of purchase with a repurchase option transaction are limited to:

(i) short term bank certificates or money market instruments such as defined within the 2007/16/EC Directive of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to certain UCITS as regards the clarification of certain definitions,

(ii) bonds issued or guaranteed by a Member State of the OECD or by their local public authorities or by supranational institutions and undertakings with EU, regional or world-wide scope,

(iii) shares or units issued by money market UCIs calculating a daily net asset value and being assigned a rating of AAA or its equivalent,

(iv) bonds issued by non-governmental issuers offering an adequate liquidity,

(v) shares quoted or negotiated on a regulated market of a European Union Member State or on a stock exchange of a Member State of the OECD, on the condition that these shares are included in a main index.

The securities purchased with a repurchase option must be in accordance with the UCITS' investment policy and must, together with the other securities that the UCITS holds in its portfolio, globally comply with the UCITS' investment restrictions.

3. Periodical information of the public

In its financial reports, the UCITS must provide separate information on securities purchased with a repurchase option, disclosing the total amount of the open transactions on the date of reference of these reports.

b) Sale of securities with a repurchase option[5]

Acting as the seller, the UCITS may agree to sell securities with a repurchase option. These transactions consist of the sale of securities with a clause reserving for the UCITS the right to repurchase the securities from the purchaser (counterparty) at a price and at a time agreed between the two parties at the time when the contract is entered into.

[5] *vente de titres à réméré*

Its involvement in such transactions is, however, subject to the following rules:

1. *Rules intended to ensure the proper completion of the sale with repurchase option transactions*

   The UCITS may enter into these transactions only if the counterparties to these transactions are subject to prudential supervision rules considered by the CSSF as equivalent to that prescribed by Community law.

2. *Limits applicable to the sale with repurchase option transactions*

   The UCITS must ensure that, at maturity of the repurchase option, it holds sufficient assets to be able to settle, if applicable, the amount agreed for the restitution of the securities to the UCITS.

3. *Periodical information of the public*

   In its financial reports, the UCITS must provide separate information on securities sold with a repurchase option, disclosing the total amount of the open transactions on the date of reference of these reports.

C. Reverse repurchase and repurchase agreement transactions

a) Reverse repurchase agreement transactions[6]

The UCITS may enter into reverse repurchase agreement transactions, which consist of a forward transaction at the maturity of which the seller (counterparty) has the obligation to repurchase the asset sold and the UCITS the obligation to return the asset received under the transaction.

Its involvement in such transactions is, however, subject to the following rules:

1. *Rules intended to ensure the proper completion of the reverse repurchase agreement transactions*

   The UCITS may enter into these transactions only if the counterparties to these transactions are subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law.

2. *Limits applicable to reverse repurchase agreement transactions*

   During the duration of the reverse repurchase agreement, the UCITS may not sell or pledge/give as security the securities purchased through this contract, except if the UCITS has other means of coverage.

   The UCITS must take care to ensure that the value of the reverse repurchase agreement transactions is kept at a level such that it is able, at all times, to meet its redemption obligations towards unitholders/shareholders.

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6 *opérations de prise en pension*

Securities that may be purchased in reverse repurchase agreements are limited to:

(i) short-term bank certificates or money market instruments such as defined within the 2007/16/EC Directive of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to certain UCITS as regards the clarification of certain definitions,

(ii) bonds issued or guaranteed by a Member State of the OECD or by their local public authorities or by supranational institutions and undertakings with EU, regional or world-wide scope,

(iii) shares or units issued by money market UCIs calculating a daily net asset value and being assigned a rating of AAA or its equivalent,

(iv) bonds issued by non-governmental issuers offering an adequate liquidity,

(v) shares quoted or negotiated on a regulated market of a European Union Member State or on a stock exchange of a Member State of the OECD, on the condition that these shares are included within a main index.

The securities purchased through a reverse repurchase agreement transaction must conform to the UCITS' investment policy and must, together with the other securities that the UCITS holds in its portfolio, globally respect the UCITS' investment restrictions.

3. Periodical information of the public

In its financial reports, the UCITS must provide separate information on securities purchased under reverse repurchase agreements, disclosing the total amount of the open transactions on the date of reference of these reports.

b) Repurchase agreement transactions[7]

The UCITS may enter into repurchase agreement transactions, which consist of a forward transaction at the maturity of which the UCITS has the obligation to repurchase the asset sold and the buyer (the counterparty) the obligation to return the asset received under the transaction.

Its involvement in such transactions is, however, subject to the following rules:

1. Rules intended to ensure the proper completion of the repurchase agreement transactions

The UCITS may enter into these transactions only if the counterparties to these transactions are subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law.

[7] *opérations de mise en pension*

2. Limits applicable to repurchase agreement transactions

The UCITS must ensure that, at maturity of the agreement, it has sufficient assets to be able to settle the amount agreed with the counterparty for the restitution to the UCITS.

The UCITS must take care to ensure that the volume of the repurchase agreement transactions is kept at a level such that it is able, at all times, to meet its redemption obligations towards unitholders/shareholders.

3. Periodical information of the public

In its financial reports, the UCITS must provide separate information on securities sold under repurchase agreements, disclosing the total amount of the open transactions on the date of reference of these reports.

II. Limitation of the counterparty risk and receipt of an appropriate guarantee[8]

a) Limitation of the counterparty risk

For each securities lending transaction, the UCITS must receive, in accordance with the fourth paragraph of section I. A. 1) of this circular, a guarantee the value of which is, during the lifetime of the lending agreement, at least equivalent to 90% of the global valuation (interests, dividends and other eventual rights included) of the securities lent.

The risk exposure to a single counterparty of the UCITS arising from one or more securities lending transactions, sale with right of repurchase transactions and/or reverse repurchase/ repurchase transactions may not exceed 10% of its assets when the counterparty is a credit institution referred to in article 41, paragraph (1) (f) of the Law of 20 December 2002 or 5% of its assets in other cases.

UCITS may take into account a guarantee conforming to the requirements set out under section II b) below in order to reduce the counterparty risk in sale with right of repurchase transactions and/or reverse repurchase and repurchase transactions.

b) Receipt of an appropriate guarantee

The UCITS must proceed on a daily basis to the valuation of the guarantee received.

The agreement concluded between the UCITS and the counterparty must include provisions to the effect that the counterparty must provide additional guarantees at very short term in case the value of the guarantee already granted appears to be insufficient in comparison with the amount to be covered. Furthermore, the aforementioned agreement must, if appropriate, provide for safety margins that take into consideration exchange risks or market risks inherent to the assets accepted as guarantee.

The guarantee must normally take the form of:

(i) liquid assets,

liquid assets include not only cash and short term bank certificates, but also money market instruments such as defined within the 2007/16/EC Directive of 19 March 2007 implementing Council Directive 85/611/EEC on the

[8] *sûreté* (the term "guarantee" used in this translation is to be understood as "collateral" where appropriate).

coordination of laws, regulations and administrative provisions relating to certain UCITS as regards the clarification of certain definitions. A letter of credit or a guarantee at first-demand given by a first class credit institution not affiliated to the counterparty are considered as equivalent to liquid assets,

(ii) bonds issued or guaranteed by a Member State of the OECD or by their local public authorities or by supranational institutions and undertakings with EU, regional or world-wide scope,

(iii) shares or units issued by money market UCIs calculating a daily net asset value and being assigned a rating of AAA or its equivalent,

(iv) shares or units issued by UCITS investing mainly in bonds/shares mentioned in (v) and (vi) below,

(v) bonds issued or guaranteed by first class issuers offering an adequate liquidity, or

(vi) shares admitted to or dealt in on a regulated market of a Member State of the European Union or on a stock exchange of a Member State of the OECD, on the condition that these shares are included in a main index.

The guarantee given under any form other than cash or shares/units of a UCI/UCITS must be issued by an entity not affiliated to the counterparty.

The guarantee given in the form of cash may expose the UCITS to a credit risk vis-à-vis the trustee of this guarantee. If such risk exists, the UCITS must take it into consideration for the purpose of the limits on deposits prescribed by article 43 (1) of the amended Law of 20 December 2002 concerning undertakings for collective investment. As a principle, the guarantee given must not be safekept by the counterparty, except if it is legally protected from consequences of default of the latter.

The guarantee given in a form other than cash must not be safekept by the counterparty, except if it is adequately segregated from the latter's own assets.

The UCITS must make sure that it is able to claim its rights on the guarantee in case of the occurrence of an event requiring the execution thereof. Therefore, the guarantee must be available at all times, either directly or through the intermediary of a first class financial institution or a wholly-owned subsidiary of this institution, in such a manner that the UCITS is able to appropriate or realise the assets given as guarantee, without delay, if the counterparty does not comply with its obligation to return the securities.

Also, the UCITS must make sure that its contractual rights relating to the relevant transactions permit, in case of a liquidation, of a reorganisation[9] or in any other situation of equal ranking[10], to discharge its obligation to return the assets received as a guarantee, if and to the extent that the restitution cannot be undertaken on the terms initially agreed.

During the duration of the agreement the guarantee cannot be sold or given as a security or pledged, except when the UCITS has other means of coverage.

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9 *mesure d'assainissement*.
10 *toute autre situation de concours*.

III. Reinvestment of cash provided as a guarantee

If the guarantee was given in the form of cash, such cash may be reinvested by the UCITS in:

a. shares or units in money market UCIs calculating a daily net asset value and being assigned a rating of AAA or its equivalent,

b. short-term bank deposits,

c. money market instruments as defined in Directive 2007/16/EC of 19 March 2007,

d. short-term bonds issued or guaranteed by a Member State of the European Union, Switzerland, Canada, Japan or the United States or by their local authorities or by supranational institutions and undertakings with EU, regional or world-wide scope,

e. bonds issued or guaranteed by first class issuers offering an adequate liquidity, and

f. reverse repurchase agreement transactions according to the provisions described under section I (C) a) of this circular.

Financial assets other than bank deposits and units or shares of UCIs acquired by means of reinvestment of cash received as a guarantee, must be issued by an entity not affiliated to the counterparty.

Financial assets other than bank deposits must not be safekept by the counterparty, except if they are segregated in an appropriate manner from the latter's own assets. Bank deposits must in principle not be safekept by the counterparty, unless they are legally protected from consequences of default of the latter.

Financial assets may not be pledged/given as a guarantee, except when the UCITS has sufficient liquid assets enabling it to return the guarantee by a cash payment.

Short-term bank deposits, money market instruments and bonds referred to in (b) through (d) above must be eligible investments within the meaning of Article 41 (1) of the Law of 20 December 2002.

The reinvestment of cash received as a guarantee is not subject to the diversification rules generally applicable to UCITS, provided however, that the UCITS must avoid an excessive concentration of its reinvestments, both at issuer level and at instrument level. Reinvestments in assets referred to in (a) and (d) above are exempt from this requirement.

If the short-term bank deposits referred to in (b) are likely to expose the UCITS to a credit risk vis-à-vis the trustee, the UCITS must take this into consideration for the purpose of the limits on deposits prescribed by article 43 (1) of the amended Law of 20 December 2002 concerning undertakings for collective investment.

The reinvestment must, in particular if it creates a leverage effect, be taken into account for the calculation of the UCITS' global exposure. Any reinvestment of a guarantee provided in the form of cash in financial assets providing a return in excess of the risk free rate[11], is subject to this requirement.

Reinvestments must be specifically mentioned with their respective value in an appendix to the financial reports of the UCITS.

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[11] *procurant un rendement supérieur au taux sans risque*.

24.

CSSF CIRCULAR 08/339 (as amended by CSSF Circular 08/380)

RELATING TO THE GUIDELINES OF THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS (CESR) CONCERNING ELIGIBLE ASSETS FOR INVESTMENT BY UCITS

CSSF Circular 08/339 (as amended by CSSF Circular 08/380) relating to the Guidelines of the Committee of European Securities Regulators (CESR) concerning eligible assets for investment by UCITS

Luxembourg, 19 February 2008

To all Luxembourg undertakings for collective investment and to all those that take part in the functioning and control of these undertakings

CSSF CIRCULAR 08/339

(as amended by CSSF Circular 08/380)

Re: Guidelines of the Committee of European Securities Regulators (CESR) concerning eligible assets for investment by UCITS

Ladies and Gentlemen,

This circular draws the attention of UCITS subject to Part I of the amended Law of 20 December 2002 relating to undertakings for collective investment to the publication of the following guidelines published by the Committee of European Securities Regulators (hereafter "CESR"):

1) *CESR's guidelines concerning eligible assets for investment by UCITS – March 2007, Ref.: CESR/07-044.* ***The document was updated by CSSF Circular 08/380.***

2) *CESR's guidelines concerning eligible assets for investment by UCITS – The classification of hedge fund indices as financial indices – July 2007, ref.: CESR/07-0434.*

These documents are attached to this circular. They are also available on the CESR website: http://www.cesr.eu.

CESR's guidelines should be read in conjunction with the provisions of Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating undertakings for collective investment in transferable securities (UCITS), as amended, as regards the clarification of certain definitions.

Directive 2007/16/EC aims at clarifying certain definitions of Directive 85/611/EEC, as amended, concerning eligible assets for investment by UCITS in order to ensure uniform application of this Directive throughout the European Union.

Directive 2007/16/EC has been transposed into Luxembourg law through the Grand-Ducal regulation of 8 February 2008 concerning certain definitions of the amended Law of 20 December 2002 relating to undertakings for collective investment. This regulation has been published in *Mémorial* A – N° 19 of 19 February 2008.

In relation to the provisions of Directive 2007/16/EC and Grand-Ducal regulation of 8 February 2008, the guidelines issued by CESR in the document *"CESR's guidelines concerning eligible assets for investment in UCITS"* provide additional clarifications relating to eligible assets for investment by UCITS covered by Directive 85/611/EEC, as amended.

For example, point 23 of *"CESR's guidelines concerning eligible assets for investment by UCITS"* provides further details in relation to Article 10 of Directive 2007/16/EC as regards transferable securities and money market instruments embedding derivatives. It is important to note in this context that UCITS are responsible for assessing, where applicable, whether these transferable securities and money market instruments embed or do not embed a derivative.

Special attention should be paid to point 26 of *CESR's guidelines concerning eligible assets for investment by UCITS"* which provides further details on the first two indents of Article 41(1)e) of the amended Law of 20 December 2002 relating to undertakings for collective investment.

More specifically, the above document defines in particular the factors that can be used to assess whether the supervision to which a collective investment undertaking must be subject is equivalent in order to qualify as an eligible undertaking for collective investment in the context of the investment policy of a UCITS.

The guidelines issued by CESR in the document *"CESR's guidelines concerning eligible assets for investment by UCITS – The classification of hedge fund indices as financial indices"* provide further specific details on the eligibility of hedge fund indices as underlying instruments of a financial derivative instrument. Moreover, this document specifies that UCITS seeking exposure to a hedge fund index must undertake out appropriate due diligence. This includes the obligation for the UCITS to assess the quality of the hedge fund index.

All supervisory authorities members of CESR have committed to apply these CESR guidelines.

UCITS shall thus take into account these guidelines when assessing whether a specific financial instrument constitutes an eligible asset for investment within the meaning of the relevant provisions of the amended Law of 20 December 2002, as further specified in Grand-Ducal regulation of 8 February 2008.

The guidelines issued by CESR are applicable as from the entry into force of Grand-Ducal regulation of 8 February 2008.

UCITS existing at the time of the implementation of the guidelines issued by CESR benefit from an extension until 23 July 2008 at the latest to comply with these guidelines.

Annexes:

Annex I: *CESR's guidelines concerning eligible assets for investment by UCITS – March 2007, Ref.: CESR/07-044* ***The document was updated by CSSF Circular 08/380.***

Annex II: *CESR's guidelines concerning eligible assets for investment by UCITS – The classification of hedge fund indices as financial indices – July 2007, Ref.: CESR/07-434*

25.

CSSF CIRCULAR 07/277

RELATING TO THE NEW NOTIFICATION PROCEDURE IN ACCORDANCE WITH THE GUIDELINES OF THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS (CESR) CONCERNING THE SIMPLIFICATION OF THE UCITS NOTIFICATION PROCEDURE

CSSF Circular 07/277 relating to the new notification procedure in accordance with the guidelines of the Committee of European Securities Regulators (CESR) concerning the simplification of the UCITS notification procedure

Luxembourg, 9 January 2007

To all Luxembourg undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings

CSSF CIRCULAR 07/277

Re: The new notification procedure in accordance with the guidelines of the Committee of European Securities Regulators (CESR) concerning the simplification of the UCITS notification procedure

Ladies and Gentlemen,

The purpose of this Circular is to draw the attention of UCITS subject to Part I of the Law of 30 March 1988 relating to UCIs or to Part I of the Law of 20 December 2002 relating to UCIs to the new notification procedure in accordance with the guidelines of the Committee of European Securities Regulators (CESR) concerning the simplification of the UCITS notification procedure.

This document, published by CESR on 29 June 2006 with the reference CESR/06-120b, is available on CESR website at http://www.cesr.eu.

The purpose of CESR's guidelines is to present a common approach to the administration, by host authorities, of the notification procedures, as disclosed in Article 46 of the Directive 85/611/CEE, as amended. The objective of the guidelines is to bring more simplicity, transparency and certainty to the procedure of notification and to accelerate the processing of the file.

The intention of this Circular is also to state more precisely the approach adopted by the CSSF as regards European passports for UCITS following the adoption of the new CESR guidelines.

A. The following sections of the document CESR/06-120b, relating to the notification procedure of UCITS and to the modifications and updates of UCITS, can be pointed out:

1. Notification procedure

a) With regard to the notification procedure, the UCITS has to provide a certain number of documents to the host State authority. The document CESR/06-120b introduces a standardised attestation letter of the home State authority (Annex I to the document) and a standardised notification letter (Annex II of the document) which shall be submitted to the host State authority.

The UCITS shall, among other things, provide the documents listed in Annex II to the CESR document to the host State authority. A detailed list is enclosed in Annex 1 of this Circular.

b) The host authorities shall not request certification by the home State authority of the documents listed in Annex II of the CESR document and which have to be provided with the notification letter. These authorities shall accept that the notifying UCITS or a third party duly empowered by the UCITS self-certifies the documents. This certification must confirm that the documents attached to the notification letter are the most recent ones that have been issued or approved by the home State authority ("self-certification").

c) A supervisory authority shall issue an attestation letter in accordance with the standard model disclosed in Annex I of the CESR document. For the notification procedure with the other Member State authorities, a true copy of such original attestation letter, certified by the UCITS or a third party duly empowered by the UCITS, shall be used.

2. Modifications and updates

a) The UCITS shall request from its supervisory authority to issue a new attestation solely in the case where the information on the UCITS provided in the original attestation issued by the supervisory authority has been modified. These modifications are, *inter alia*, the change of the management company or the creation of a new sub-fund in an existing UCITS.

b) The UCITS shall keep all their documents up-to-date. Therefore, all modifications to the constitutional documents or management rules and the articles of incorporation, as well as any creation of new units/share classes and the new (full and simplified) prospectuses shall be transmitted to the host State authority by the UCITS. The same rule applies to the latest published annual reports and any subsequent half-yearly reports. Submission of these documents has to be made without delay after the documents have been made available the first time in the home Member State.

All the documents which do not constitute modifications of the information included in the original attestation of the supervisory authority are certified by the UCITS or a third party duly empowered by the UCITS ("self-certification").

B. Practice adopted by the CSSF regarding the European passport for UCITS

I. Luxembourg UCITS that market their units/shares in another EU Member State

UCITS that consider to market their units/shares in another EU Member State shall submit to the host State authority all the documents listed in Annex 1 to this Circular, and, as the case may be, any other specific documents required by the host State authority.

UCITS that market their units/shares in another EU Member State should take into consideration the following points:

1. Attestation letter

The CSSF provides every UCITS with an attestation as set out in Annex 1 of the document CESR/06-120b, together with a letter confirming its registration on the official list. The CSSF's attestation letter for UCITS will be issued in the official languages German and French. Furthermore, an attestation letter in English language will be provided to the UCTIS. On request, the CSSF provides the attestation letter in electronic form.

The attestation letter discloses all UCITS sub-funds approved by the CSSF. The sub-funds listed in the attestation letter shall be the same as those mentioned in the full prospectus of the UCITS.

A new attestation may be requested from the CSSF by the UCITS only in the case of the modification of the information on the UCITS provided in the original attestation issued by the CSSF, such as a change of management company or the creation of a new sub-fund in an existing UCITS.

In any other cases, the procedure of self-certification mentioned in point A.2.(b) above applies.

2. Notification letter

UCITS shall use the standardised notification letter attached in Annex II of the CESR document when considering to market their units/shares in another EU Member State. A sample of the notification letter is available in French, German and English on the CSSF website http://www.cssf.lu, under section "Marketing of UCITS > Marketing of units/shares of Luxembourg UCITS in the EU".

Nevertheless, the CSSF advises UCITS to visit the Internet websites of the host Member State authorities for any further information.

3. Visa of prospectuses

Luxembourg UCITS shall submit **three** copies of their (full and simplified) prospectuses in their final form and presentation to the CSSF. One exemplar, bearing the Visa stamp, will be returned to the person that has submitted the file.

With respect to the notification procedure with the host State authorities, the UCITS shall, pursuant to point A.1.(b) above, attach to the notification letter a true copy of the visa-stamped prospectus, certified by the UCITS or a third person duly empowered by the UCITS.

4. Electronic filing

The CSSF accepts that the applicants submit their requests for attestation and their documents electronically to the address opc@cssf.lu. Also, the applicants that have access to the e-file connection may also submit their application or documents *via* the e-file communication platform at http://www.e-file.lu.

II. Foreign UCITS established in another EU Member State that consider to market their units/shares in Luxembourg

1) With regard to the notification procedure, the UCITS are required to provide the CSSF with the documents listed in Annex 2 of this Circular.

In addition, the UCITS shall submit specific information that relates to the marketing of units/shares in Luxembourg to the CSSF. To this end, the UCITS shall use the form disclosed in Annex 3. This form is available on the CSSF's website at http://www.cssf.lu, under section "Marketing of UCITS" > Marketing of units/shares of European UCITS in Luxembourg".

2) Only the sub-funds that the UCITS considers to market actively in Luxembourg must be mentioned in the notification letter to be submitted to the CSSF by an umbrella UCITS. A sample notification letter is available in one of the three languages French, German and English on the CSSF's website at the same address and section as mentioned above.

3) The UCITS or a third party duly empowered by the UCITS may self-certify the documents listed in Annex 2 of this Circular and that must be attached to the notification letter. This certificate confirms that the documents that have been attached to the notification letter are the most recent ones that have been issued or approved by the home State authority. For the notification procedure, a true copy of the original attestation letter in French, German or English certified by the UCITS or a third party duly empowered by the UCTIS, shall be submitted to the CSSF.

The UCITS shall submit a new attestation to the CSSF solely where the information on the UCITS provided in the original attestation issued by the supervisory authority has been amended. These modifications are, for example, the change of management company or the creation of new sub-funds in an existing UCITS.

The required documents may be filed with the CSSF electronically to opc@cssf.lu. Furthermore, applicants that have access to the e-file connection may also submit their documents *via* the e-file communication platform at http://www.e-file.lu.

4) The CSSF informs the UCITS of any missing information or documents within one week after receiving the file. Within one week after the notification is deemed to be complete, the CSSF informs the UCITS that the marketing of units/shares may immediately.

In the case where an umbrella UCITS markets sub-funds in Luxembourg and considers to market new or additional sub-funds in Luxembourg, the CSSF applies the same procedure as that described in the previous paragraph.

C. National marketing rules and other specific national regulations

According to the document CESR/06-120b, the EU Member States are requested to publish their national marketing rules in a standardised form specified in Annex III of the document in force.

The rules applicable in Luxembourg are available on the CSSF's website at http://www.cssf.lu, under section "Marketing of UCITS > Marketing of units/shares of European UCITS in Luxembourg".

For any additional questions on the marketing of units/shares of UCITS in Luxembourg, please contact Mr Jean-Paul Heger (tel.: +352 26 25 1 527, e-mail: opc@cssf.lu).

This Circular comes into force with immediate effect.

Annexes

Annex 1.

List of documents that a UCITS marketing its units/shares in the European Union must provide to the host State authority

The UCITS shall provide the host State authority with the documents listed in Annex II of the CESR document, i.e.:

- the attestation letter granted by the home State authority drafted according to the model letter in Annex I of the CESR document;

- the notification letter drafted according to the model in Annex II of the CESR document; the notification letter may be submitted to the host authority in a language common in the sphere of finance or in the official language(s) of the host Member State provided that this is not against the national rules and regulations of the host State;

- the latest version of the management regulations and articles of incorporation of the investment company;

- the latest version of the full and simplified prospectuses;

- the latest published annual report and any subsequent half-yearly report and, as regards umbrella funds, the latest versions of the annual report and the half-yearly report covering all sub-funds;

- details of the arrangements made for the marketing of the units/shares of the UCITS in the host Member State.

The documents listed above, except for the attestation, must be attached to the notification letter in their original version as well as in a translated version in the official language(s) of the host State. The host State may also allow the use of a non-official language.

The attestation letter is submitted in its original version, together, where applicable, with an English version.

Annex 2.

List of documents that foreign UCITS established in another EU Member State must submit to the CSSF

The foreign UCITS established in another EU Member State that considers to market its units/shares in Luxembourg shall submit to the CSSF the documents listed in Annex II of the CESR document, i.e.:

- the attestation letter granted by the home Member State authority drafted according to the model letter in Annex I of the CESR document;

- the notification letter drafted according to the model in Annex II of the CESR document; the notification letter may be submitted to the CSSF in one of the languages French, German and English and can be downloaded from the CSSF's website at http://www.cssf.lu, under section "Marketing of UCITS > Marketing of units/shares of European UCITS in Luxembourg";

- the latest version of the management regulations and articles of incorporation of the investment company;

- the latest version of the full and simplified prospectuses;

- the latest published annual report and any subsequent half-yearly report and, as regards umbrella funds, the latest versions of the annual report and the half-yearly report covering all sub-funds;

- details of the arrangements made for the marketing of the units/shares of the UCITS in Luxembourg.

In addition, the foreign UCITS fill in the form in Annex 3 of this Circular and submit it to the CSSF. The form is available for download on the CSSF website at the same address and section as mentioned above.

The documents listed above shall be attached to the notification letter in one of the languages French, German or English.

Annex 3.

Specific information on the marketing in Luxembourg of units/shares of a UCITS established in another Member State of the European Union

1)	Name of the UCITS	
2)	Home Member State	
3)	Registered office	
4)	Name and address of the financial service (paying agent) in Luxembourg	
5)	Name and address of the primary contact in Luxembourg in charge of the notification to the CSSF	
6)	Name of the person(s) empowered by mandate to certify documents on behalf of the UCITS	

Name, first name, position, date and signature:

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26.

CSSF CIRCULAR 04/146

RELATING TO THE PROTECTION OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT AND THEIR INVESTORS AGAINST LATE TRADING AND MARKET TIMING PRACTICES

CSSF Circular 04/146 relating to the protection of undertakings for collective investment and their investors against *Late Trading* and *Market Timing* practices

Luxembourg 17 June, 2004

To all credit institutions, professionals of the financial sector, Luxembourg undertakings for collective investment and all parties involved in the operation and supervision of such undertakings

CSSF CIRCULAR 04/146

Re: Protection of undertakings for collective investment and their investors against *Late Trading* and *Market Timing* practices

Ladies and Gentlemen,

The purpose of this Circular is to protect undertakings for collective investment (UCIs) and their investors against the *Late Trading* and *Market Timing* practices described hereafter.

To that end, it clarifies the protective measures to be adopted by UCIs and certain of their service providers. These measures take into account the particularities of Luxembourg UCIs which are frequently invested and distributed through all time zones and the marketing of which is frequently undertaken by intermediaries subject to the supervision of a foreign authority.

This Circular further fixes more general rules of conduct to be complied with by all professionals subject to the supervision of the CSSF.

Finally, it extends the role of the auditor of the UCI, as described in CSSF Circular 02/81, as regards the verification of the procedures and controls established by the UCI to protect the UCI against *Late Trading* and *Market Timing* practices.

Late Trading is to be understood as the acceptance of a subscription, conversion or redemption order after the time limit fixed for accepting orders (*cut-off time*) on the relevant day and the execution of such order at the price based on the net asset value (NAV) applicable to such same day.

Through *Late Trading*, an investor may take advantage of being aware of events or information published after the cut-off time, but which events or information are not yet reflected in the price which will be applied to such investor. This investor is therefore privileged compared to the other investors who have complied with the official cut-off time. The advantage of this practice to the investor is increased even more if he is able to combine *Late Trading* with *Market Timing.*

The *Late Trading* practice is not acceptable as it violates the provisions of the prospectuses of the UCIs which provide that an order received after the cut-off time is dealt with at a price based on the next applicable NAV.

The acceptance of an order is not to be considered as a *Late Trading* transaction, where the intermediary in charge of the marketing of the UCI transmits to the transfer agent of the UCI after the official cut-off time to still be dealt with at the NAV applicable on such day, if such order has effectively been issued by the investor before the cut-off time. To limit the risk of abuse, the transfer agent of the UCI must ensure that such order is transmitted to him within a reasonable timeframe.

The acceptance of an order dealt with or corrected after the cut-off time by applying the NAV applicable on such day is also not to be considered as a *Late Trading* transaction, if such order has effectively been issued by the investor before the cut-off time.

Market Timing is to be understood as an arbitrage method through which an investor systematically subscribes and redeems or converts units or shares of the same UCI within a short time period, by taking advantage of time differences and/or imperfections or deficiencies in the method of determination of the NAV of the UCI.

Opportunities arise for the *market timer* either if the NAV of the UCI is calculated on the basis of market prices which are no longer up to date (stale prices) or if the UCI is already calculating the NAV when it is still possible to issue orders.

The *Market Timing* practice is not acceptable as it may affect the performance of the UCI through an increase of the costs and/or entail a dilution of the profit.

As *Late Trading* and *Market Timing* practices are likely to affect the performance of the UCI and are likely to harm investors, the preventive measures recommended hereafter have to be applied with great care.

I. Prevention of Late Trading and Market Timing practices

a) protective measures to be adopted by the UCI and by certain of its service providers

The investor must, in principle, subscribe, redeem or convert the units or shares of a UCI at an unknown NAV. This implies that the cut-off time must be fixed in a manner to precede or to be simultaneous to the moment when the NAV, on which the applicable price is based ("*forward pricing*"), is calculated. A non-precise cut-off time such as, for example, "until the close of business" is to be avoided. The prospectus must specifically mention that subscriptions, redemptions and conversions are dealt with at an unknown NAV and must indicate the cut-off time.

The transfer agent of the UCI shall ensure that subscription, redemption and conversion orders are received before the cut-off time as set forth in the UCI's prospectus in order to process them at the price based on the NAV applicable on that day. In respect of orders received after such cut-off time, the transfer agent applies the price based on the next applicable NAV. The transfer agent shall ensure that he receives within a reasonable time period the orders which have effectively been issued by investors before the cut-off time but which have been forwarded to the transfer agent by intermediaries in charge of the marketing of the UCI after such time limit only.

In order to be able to ensure the compliance with the cut-off time, the transfer agent of the UCI must adopt appropriate procedures and undertake to perform the necessary controls. The transfer agent undertakes either to provide the UCI on an annual basis with a confirmation from its auditor on its compliance with the cut-off time or to authorise the auditor of the UCI to perform its own controls on the compliance of the cut-off time.

If intermediaries in charge of the marketing of the UCI have been appointed by the UCI to ensure the collection of orders and the control of the cut-off time with regard to the acceptance of the orders, the UCI shall ensure that it obtains from each intermediary concerned a contractual undertaking pursuant to which the intermediaries undertake towards the UCI to transmit to the transfer agent of the UCI, for the processing at the NAV applicable on such day, only such orders which it has received before such cut-off time.

The cut-off time, the time at which the securities prices which are taken into account for the calculation of the NAV are fixed[1] and the time at which the NAV is calculated must be combined in a manner so as to minimise any arbitrage possibilities arising from time differences and/or imperfections/deficiencies in the method of determination of the NAV of the UCI.

UCIs which, due to their structure, are exposed to Market Timing practices must put in place adequate measures of protection and/or control to prevent and avoid such practices. The introduction of appropriate subscription, redemption and conversion charges, an increased monitoring of dealing transactions and the valuation of the portfolio securities at "fair value" may constitute possible solutions for such UCIs.

The board of directors of the UCI analyses such solutions with care and will implement them or make certain that they are implemented.

The UCI shall ensure not to permit transactions which it knows to be, or it has reasons to believe to be, related to *Market Timing* and uses its best available means to avoid such practices.

If there exist formal contractual relationships between the UCI and intermediaries in charge of its marketing, the UCI shall ensure to obtain from the intermediary concerned a contractual undertaking from the intermediary not to permit transactions which the intermediary knows to be, or has reasons to believe to be, related to market timing.

The prospectus of the UCIs concerned must include a statement indicating that the UCI does not permit practices related to *Market Timing* and that the UCI reserves the right to reject subscription and conversion orders from an investor who the UCI suspects of using such practices and to take, if appropriate, the necessary measures to protect the other investors of the UCI.

Particular attention has to be paid to subscription, conversion or redemption orders from employees of the service providers acting for the UCI or from any person who holds or is likely to hold privileged information (e.g.: knowledge on the exact composition of the portfolio of the UCI … etc). Accordingly, adequate measures have to be taken by the service providers of the UCIs to avoid the risk that any such person can take advantage of his privileged situation either directly or through another person.

b) rules of conduct to be followed by all professionals subject to the supervision of the CSSF

The CSSF prohibits any express or tacit agreement which permits certain investors to undertake *Late Trading* or *Market* Timing practices.

The CSSF requires that any professional subject to its supervision refrains from using *Late Trading* or *Market Timing* practices when investing in a UCI or from processing a subscription or conversion order of units or shares of a UCI which he knows to be, or he has reasons to believe to be, related to *Late Trading* or *Market Timing*.

The CSSF requires that any professional subject to its supervision that detects or is aware of a case of *Late Trading* or *Market* Timing, informs as soon as possible the CSSF by providing to the latter the necessary information to enable it to make a judgement on the situation.

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[1] Note from the translator: sometimes referred to as "valuation point".

II. Protection of the UCI and investors in case of the occurrence of *Late Trading* and/or *Market Timing* transactions

Any person who is guilty of knowingly undertaking or supporting *Late Trading* or *Market Timing* practices as defined by this circular exposes himself to sanctions or, in addition, to the obligation of repairing the damage caused to the UCI.

III. Additional provisions to CSSF Circular 02/81 on the guidelines concerning the task of the auditors of UCIs

The auditor of the UCI checks the procedures and controls put in place by the UCI so as to protect itself from *Late Trading* practices and describes these in its long form report. For UCIs which, due to their structure, are likely to be subject to *Market Timing* practices, the auditor checks the measures and/or controls put in place by the UCI to protect itself by the best possible means against such practices and describes such measures and/or controls in its long form report.

If the auditor of the UCI, during the performance of its duties, becomes aware of a case of *Late Trading* or *Market Timing*, he must indicate it in its long form report.

In case of indemnification of investors harmed by *Late Trading* or *Market Timing* practices during the accounting year, the auditor must give, in the long form report, its opinion whether investors have been adequately indemnified.

27.

CSSF CIRCULAR 03/97

RELATING TO THE PUBLICATION BY UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN THE REFERENCE DATABASE ("*RÉFÉRENTIEL DE LA PLACE*") OF THE SIMPLIFIED PROSPECTUSES AND THE FULL PROSPECTUSES AS WELL AS THE ANNUAL AND SEMI-ANNUAL REPORTS

CSSF Circular 03/97 relating to the publication by undertakings for collective investment in the reference database ("*référentiel de la place*") of the simplified prospectuses and the full prospectuses as well as the annual and semi-annual reports

Luxembourg, 28 February 2003

To all Luxembourg undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings.

CSSF CIRCULAR 03/97

Re: Publication by undertakings for collective investment in the reference database ("*référentiel de la place*") of the simplified prospectuses and the full prospectuses as well as the annual and semi-annual reports

Ladies and Gentlemen,

The purpose of this circular is to clarify the method of publication of simplified prospectuses and full prospectuses as well as the annual and semi-annual reports which undertakings for collective investment (UCIs) must publish for the benefit of their investors pursuant to chapter 17 of the Law of 20 December 2002 relating to undertakings for collective investment (the "Law of 20 December 2002").

That Law provides in its Article 114 that:

(1) UCIs must send their simplified and full prospectuses and any amendments thereto, as well as the annual and semi-annual reports, to the CSSF.

(2) The CSSF may publish or cause the publication of the aforesaid documents by such means as it shall consider adequate.

To take into account the evolution of information technology, a reference database has been put in place by the *Centrale de Communication Luxembourg S.A.* (CCLux) in order to create an infrastructure which permits investors and professionals of the industry to have access, by electronic means, to all prospectuses and annual and semi-annual reports of Luxembourg UCIs.

This platform is in line with the new European trends aiming at facilitating the distribution and the inspection of prospectuses and annual and semi-annual reports by means of electronic support such as the Internet.

The CSSF considers that this reference database strengthens the transparency of the information relating to UCIs subject to Luxembourg law and facilitates the access to such information for investors.

On the basis of Article 114 (2) of the Law of 20 December 2002, the simplified prospectus and the full prospectus, as well as the annual and semi-annual reports of the UCIs subject to the aforesaid law must be published in the reference database. This compulsory publication is not applicable to UCIs subject to the Law of 19 July 1991 relating to UCIs the securities of which are not intended to be placed with the public.

It is strongly recommended that UCIs subject to the Law of 30 March 1988 relating to undertakings for collective investment (the "Law of 30 March 1988") also comply with this obligation of publication in the reference database.

The publication of the prospectus must be made once the latter has been approved by the CSSF. To the extent notified by a UCI to the CSSF, the publication of the prospectus is postponed until, at the latest, the start date of the distribution of the units of the UCI.

The annual and semi-annual reports must be published within the deadlines set forth in Article 109 (2) of the Law of 20 December 2002 and in Article 85 (2) of the Law of 30 March 1988.

The CSSF may, on the basis of an adequate justification, grant a derogation in relation to the obligation to publish the prospectuses and the annual and semi-annual reports in the reference database.

A separate circular will be issued at the time when the reference database will become operational and will deal with the methods of transmission of the prospectuses and the annual and semi-annual reports of UCIs to the CSSF and to CCLux.

28.

CSSF CIRCULAR 03/88

RELATING TO THE CLASSIFICATION OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT SUBJECT TO THE PROVISIONS OF THE LAW OF 20 DECEMBER 2002 RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CSSF Circular 03/88 relating to the classification of undertakings for collective investment subject to the provisions of the Law of 20 December 2002 relating to undertakings for collective investment

Luxembourg, 22 January 2003

To all Luxembourg undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings.

CSSF CIRCULAR 03/88

Re: Classification of undertakings for collective investment subject to the provisions of the Law of 20 December 2002 relating to undertakings for collective investment

Ladies and Gentlemen,

The purpose of this circular is to clarify the classification of undertakings for collective investment (UCIs) which are subject to the Law of 20 December 2002 which entered into force on 1 January 2003. The main changes introduced by the Law of 20 December 2002 are described in CSSF Circular 03/87.

The amended Law of 30 March 1988 relating to UCIs (hereafter the "Law of 30 March 1988") will remain in force until 13 February 2007 and, as a consequence, until such date two distinct laws will, on a parallel basis, regulate matters regarding UCIs.

Pursuant to the transitional provisions set forth in the Law of 20 December 2002, the following UCIs established under the Law of 30 March 1988 must comply with the new legal provisions by 13 February 2004 at the latest:

- UCITS subject to Part I of the Law of 30 March 1988 established between 13 February 2002 and 1 January 2003;

- UCITS within the meaning of Article 1 of the Law of 30 March 1988, excluding those referred to in Article 2 of such law, established between 1 January 2003, and 13 February 2004, which in a first stage had elected to be governed by the Law of 30 March 1988;

- UCIs existing on 1 January 2003, subject to Part II of the Law of 30 March 1988 which qualify as UCITS under Part I of the Law of 20 December 2002;

- UCIs existing on 1 January 2003, subject to Part II of the Law of 30 March 1988 which qualify as UCIs subject to Part II of the Law of 20 December 2002;

- UCIs established between 1 January 2003 and 13 February 2004, which qualify either as UCITS under Part I of the Law of 20 December 2002 or as UCIs under Part II of the Law of 20 December 2002 and which in a first stage elected to be governed by the Law of 30 March 1988 (Part II).

All undertakings for collective investment established on and after 13 February 2004 are subject, by operation of law, to the Law of 20 December 2002 and must comply with the provisions thereof as from the date of their establishment.

UCITS subject to Part I of the Law of 30 March 1988 established prior to 13 February 2002 may elect, until 13 February 2007, either to remain subject to the Law of 30 March 1988 or to be governed by the Law of 20 December 2002.

I. General considerations

A UCI shall be deemed to be situated in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is situated in Luxembourg.

Depending on their characteristics, Luxembourg UCIs governed by the Law of 20 December 2002 will be subject either to Part I or to Part II of such Law.

This classification permits to distinguish between:

- undertakings within the meaning of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended;

- the other undertakings which do not fall within the scope of application of directive 85/611/EEC, as amended.

II. Definition of UCIs governed by Part I of the Law of 20 December 2002

Part I of the Law of 20 December 2002 applies to all UCIs the exclusive object of which is the investment in transferable securities and/or the other liquid financial assets referred to in Article 41 (1) of the Law.

Considering this aforementioned definition, the criteria which determines whether a UCI is subject to Part I or Part II of the Law of 20 December 2002 is the intended investment objective. If the UCI invests in transferable securities and/or the other liquid financial assets referred to in the aforesaid Article 41 (1) of the Law of 20 December 2002, it is subject to Part I save for the exceptions commented in section III. below.

UCITS subject to Part I of the Law of 20 December 2002 are of the open-ended type since the rules to which they are subject provide that they directly or indirectly redeem their units or shares at the request of the investors.

Due attention must be given to the abovementioned transitional provisions of the Law of 20 December 2002 and, in particular, to Article 134 (5) concerning UCIs which exist on the date of the entry into force of such law and which are capable of becoming UCITS subject to Part I as a result of the extension of the concept of eligible assets.

Accordingly, a UCI which is presently governed byPart II of the Law of 30 March 1988 may have to submit itself, because of its investment policy, by 13 February 2004 at the latest to the provisions of Part I of the Law of 20 December 2002, unless it is excluded from Part I pursuant to Article 3 of such Law.

III. Definition of UCIs subject to Part II of the Law of 20 December 2002

Part II of the Law of 20 December 2002 applies to all UCIs the principal object of which is the investment in securities other than transferable securities and/or the other liquid financial assets referred to in Article 41 (1) of the Law, as well as to all UCITS excluded from Part I.

In its Article 3, the Law of 20 December 2002 provides for exceptions to the basic rule reproduced in section II. above by excluding from the scope of application of Part I certain categories of UCITS.

The cases of exclusion, which relate to the four categories described below, are identical to those provided for by the Law of 30 March 1988. They were described in detail in IML Circular 91/75. The first three categories described hereafter remain fundamentally identical to their description in IML Circular 91/75. The fourth category has been adjusted to take account of the extension of the concept of eligible assets of UCITS as a result of which certain UCIs which were excluded from Part I of the Law of 30 March 1988 are no longer excluded from Part I of the Law of 20 December 2002.

UCITS excluded from Part I of the Law of 20 December 2002 relate to the four following categories:

1. UCITS of the closed-ended type. These UCITS can be defined by distinguishing them from open-ended UCITS which, directly or indirectly, redeem their units or shares at the request of investors.

   The reimbursement to investors after a decision of the UCITS is not tantamount to a redemption if such reimbursement occurred without any request from investors pursuant to a redemption right.

   If the securities of a UCITS of the closed-ended type are redeemed at the request of investors after a certain date, such UCITS shall fall within the scope of application of Part I of the Law from such date onwards, unless it belongs to one of the other categories of UCITS referred to in paragraphs 2. to 4. hereafter. In case this feature is established at inception, the prospectus must, from the outset, draw the investors' attention to that fact and to the possible consequences arising therefrom, including those relating to the investment policy.

2. UCITS which raise capital without promoting the sale of their units or shares to the public within the European Union ("EU") or any part of it.

   The exclusion from Part I of the Law does not dispense the UCITS concerned from the condition of the collection of public savings which all undertakings must comply with in order to qualify as UCI; it simply prohibits the UCITS concerned to engage in any promotional activity within the EU as this concept is defined in each Member State. In Luxembourg, the concept of "promotional activity" refers in particular to the use of advertisements methods such as the press, radio, television or advertisement circulars. It does however not refer to offers of subscription which are addressed to a limited, particularly knowledgeable circle of investors.

   It follows from the above that the UCITS concerned hereby are those which, even though they are addressed to the public, renounce to any promotional activity within the EU.

3. UCITS the units or shares of which may, under their constitutional documents, only be sold to the public in countries which are not members of the European Union.

   The exclusion only applies under the condition that the management regulations or the articles of incorporation of these UCITS expressly provide that the sale of their units or shares is limited to the public of countries which are not members of the European Union and of the European Economic Area.

   Are also covered by this category, UCITS the units or shares of which are listed on the Luxembourg Stock Exchange and which market those units or shares solely outside the European Union and the European Economic Area.

4. Categories of UCITS determined by the CSSF for which the rules laid down in Chapter 5 of the Law of 20 December 2002 are inappropriate in view of their investment and borrowing policies.

UCITS covered by this exclusion belong to one of the following categories:

4.1. UCITS the investment policy of which permits the investment of 20% or more of their net assets in securities other than in transferable securities and/or other liquid financial assets referred to in Article 41 (1) of the Law of 20 December 2002.

4.2. UCITS the investment policy of which permits the investment of 20% or more of their net assets in venture capital. Investment in venture capital shall be taken to mean investment in securities of companies which have been recently formed or which are still in the course of development.

4.3. UCITS the investment policy of which permits the borrowing, on a permanent basis and for investment purposes, of amounts representing at least 25% of their net assets.

4.4. Multiple compartment UCITS, one compartment of which is not subject to Part I of the Law of 20 December 2002 by reason of its investment or borrowing policy

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29.

CSSF CIRCULAR 02/81

RELATING TO THE GUIDELINES CONCERNING THE TASK OF AUDITORS OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CSSF Circular 02/81 relating to the guidelines concerning the task of auditors of undertakings for collective investment

Luxembourg, 6 December 2002

To all Luxembourg undertakings for collective investment

CSSF CIRCULAR 02/81

Re: Guidelines concerning the task of auditors of undertakings for collective investment.

Ladies and Gentlemen,

The purpose of this circular it to set out the rules concerning the scope of the audit of the annual accounting documents and the content of the audit reports to be drawn up in this context, pursuant to the Law of 30 March 1988 relating to undertakings for collective investment ("UCIs"), as amended by the Law of 17 July 2000.

This circular intends to define the role and task of the auditor in the context of the audit of the accounting documents provided for by law. The task of the auditor is not limited to the audit of the accounting documents but also covers the analysis of the operation and procedures of the UCI.

It is understood that the task of the auditor may vary depending on the risks existing in the markets in which the UCI is active and the quality of the control mechanisms implemented at the level of the UCI.

This circular does not amend the contents of the reports on the annual accounts to be established pursuant to Schedule B as provided for by the law, but aims to specify the subjects which need to be developed in the Long form report[1] because that report constitutes, together with the report on the annual accounts and the management letter, an important source of information for the CSSF in the performance of its supervisory functions.

[1] The Circular uses the term "report on the audit of the activities of the UCI" but the term used in the industry is "long form report" and that term will be used in this translation.

SUMMARY

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V. Final provisions

I. Mandate

The auditor is appointed by the general meeting of shareholders of the UCI. For common funds, the auditor is appointed by the board of directors of the management company. The board of directors of the UCI or of the management company of the UCI must subsequently specify in writing the terms of engagement which shall contain at least the following provisions:

1. The audit of the annual accounts has to be undertaken in accordance with the working recommendations of the Luxembourg Auditors' Institute ("*Institut des Réviseurs d'Entreprises luxembourgeois*" (IRE)). In this context, the IRE provides for the application of the International Standards on Auditing ISAs) published by IFAC ("International Federation of Accountants"), adapted or completed, if needed, by national legislation or practice.

2. The audit has to cover all categories of operations of the UCI whether these operations are accounted for on the balance sheet or are recorded off-balance sheet. The mandate given to the auditor cannot exclude from its scope a category of operations or a specific operation. The audit must also cover all risks incurred by the UCI.

3. The audit must cover all aspects of the organisation and verification of the procedures which apply to the UCI. The analysis must *inter alia* cover the procedures concerning compliance with the investment restrictions, control of the calculation of the NAV and reconciliations as well as the procedures relating to the valuation methods. The audit must indeed enable all information to be provided which is required for the report on the annual accounts and the long form report.

4. The mandate for the annual audit must specifically include the following tasks:

   - to check compliance with the principles established by the circulars of the supervisory authority concerning the fight against money laundering, including in particular circular IML 94/112 concerning the fight against money laundering and the prevention of the use of the financial sector for money laundering purposes and its supplements, Circulars BCL 98/153, CSSF 00/21, CSSF 01/40 and CSSF 02/78, as well as the correct application of internal procedures for the prevention of money laundering;

   - to check compliance with all other circulars applicable to UCIs.

5. The audit of the annual accounts as defined hereabove has to be documented on the one hand by a report on the annual accounts (see chapter II. hereunder) and on the other hand by a Long form report (see chapter III. hereunder).

   In general, the UCI must immediately inform the CSSF in case the auditor resigns from its mandate before the end of the term or if the auditor envisages not to seek a re-appointment.

   In the same way, the UCI must notify the CSSF, with an indication of the reasons, of its intention to terminate the appointment of the auditor. The CSSF will in respect of each request for replacement of the auditor analyse the reasons for the proposed change and will assess if the UCI has, in the procedure for the appointment of a new auditor, given due regard to the competence and resources of the latter in view of the type and volume of the activities of the UCI.

II. Report on the annual accounts

The report on the annual accounts contains the auditor's attestation (*attestation du réviseur d'entreprises, Bestätigungsvermerk*) and is to be published in accordance with Article 85 (1) of the Law of 30 March 1988 relating to undertakings for collective investment.

In the report on the annual accounts, the auditor issues its attestation in accordance with the ISA 700[2] standards as adopted by IRE.

In accordance with Article 86 (2) of the Law of 30 March 1988 relating to undertakings for collective investment, the report on the annual accounts has to contain a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule B annexed to the prementioned law, as well as any significant information which will enable investors to make an informed judgement on the development of the activities and the results of the UCI.

In case the auditor announces to the UCI that it will issue a qualified attestation or that it will refuse to certify the accounts, the UCI concerned must immediately inform the CSSF (see also chapter IV. "Reporting to the CSSF pursuant to Article 89 (3) of the Law relating to UCIs" hereunder).

The report on the annual accounts has in any case to be submitted to the CSSF within a period of four months from the end of the period to which such report relates.

III. Long Form Report

A. General principles

The purpose of the long form report is to report on the findings of the auditor in the course of its audit concerning the financial and organisational aspects of the UCI comprising *inter alia* its relationship with the central administration, the custodian and the other intermediaries (the investment managers, the transfer agents, the distributors, etc.).

The long form report must be concise, clear and critical.

It is not intended to be made available to the public. It is issued for the exclusive use by the board of directors of the UCI or the management company of the UCI as well as the CSSF.

It must detail for every item listed under III.B., the verifications which are essential to permit a precise and informed judgement on the organisation and the financial statements of the UCI.

The auditor must, in the context of its usual audits carried out in accordance with recommendations RRC n° 21[3] of IRE, give its opinion on the compliance with the investment restrictions set out by law and/or regulations and must also obtain the assurance that the systems which have been put into place permit a proper calculation of the net asset value.

The auditor has to indicate the NAV calculation errors and the infringements to the investment restrictions which it will have ascertained during its audit and which have nevertheless not been notified to the CSSF in accordance with CSSF Circular 02/77.

In the long form report, the auditor must also analyse the NAV calculation errors and the failures to comply with investment rules which have been the subject of a notification in application of CSSF Circular 02/77, but for which the amount of indemnification did not exceed EUR 25,000 and for which the amount to be reimbursed to any one shareholder did not exceed EUR 2,500 as set out in CSSF Circular 02/77.

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2 International Standard on Auditing n° 700: The Auditor's report on financial statements.
3 Recommendation on accounting audit n° 21: The audit of the financial statements of the UCIs.

The auditor has to communicate in detail the weaknesses and the areas to be improved which it will have ascertained during its audit. This communication can be made in the context of the long form report or through a letter of recommendation[4] addressed to the board of directors of the UCI or the management company of the UCI. The findings of the auditor must mandatorily be supplemented by comments of the board of directors of the UCI or the management company of the UCI. In case a management letter is drawn up, it must be annexed to the long form report. If the auditor does not issue a management letter, this must be expressly noted in the long form report.

In accordance with chapter P of circular IML 91/75 of 21 January 1991[5], the UCI must immediately communicate to the CSSF, without having been invited to do so, all other documents issued by the auditor in the context of its annual audit as referred to hereabove.

The long form report has to be remitted to the CSSF within a period of four months from the end of the period to which the report refers.

B. Structure of the long form report

The long form report must be drawn up in accordance with the lay out featured below. The layout corresponds to the minimum information to be detailed by the auditor in its report. However, the layout of the report can be adapted to the volume and the complexity of the activity and to the structure of the UCI. If appropriate, the auditor will have to supplement the layout set out below by those items which it will find necessary. If one particular item of the layout does not apply to a UCI, the auditor will have to explicitly mention this fact under the item concerned.

1. Organisation of the UCI

   1.1. Central administration

      1.1.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the central administration

      1.1.2. Situation where the audit and verifications are made by the auditor of the UCI

         1.1.2.1. Assessment of procedures

         1.1.2.2. Computer systems

   1.2. Custodian

      1.2.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the custodian

      1.2.2. Situation where the audit and verifications are made by the auditor of the UCI

         1.2.2.1. Assessment of procedures

         1.2.2.2. Computer systems

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4 Commonly referred to as a "management letter".

5 Circular IML 91/75 relating to the revision and remodeling of the rules to which undertakings for collective investment governed by the Law of 30 March 1988 on undertakings for collective investment are subject to.

1.2.2.3. Result of the reconciliations

1.3. Relationship with the management company

1.4. Relationship with other intermediaries

2. Audit of the operations of the UCI

2.1. Control of anti-money laundering rules

2.2. Valuation methods

2.3. Audit of the risk management system

2.4. Specific audits

2.5. Assets and liabilities and profit and loss account

2.6. Publication of the NAV

3. Internet

4. Complaints from investors

5. Follow-up on problems identified in preceding long form reports

6. General conclusion

C. Explanatory comments on the structure of the long form report

1. Organisation of the UCI

The operations of a UCI require the recourse to specialised service providers in Luxembourg and abroad.

Under the provisions of the Law of 30 March 1988 relating to undertakings for collective investment (as amended), the central administration of the UCI must be located in Luxembourg. The prementioned law also provides that the custodian of a UCI must be established in Luxembourg. The entities which exercise one or several functions in relation with the central administration and/or the custody for the UCI play a significant role in the operation of a UCI.

To the extent that the custodian and the professional of the financial sector which carries out the central administration duties for the UCI have been subjected by their auditor to an audit on the activities exercised for UCIs which covers at least the items detailed under paragraphs 1.1.2 and 1.2.2 herebelow, the auditor of the UCI may refer to the long form reports of the auditor of the custodian or the professional of the financial sector on dealing with the services provided to undertakings for collective investment.

In case the auditor of the UCI does not make use of that possibility and considering the important role in the organisation of the UCI assumed by the entities which carry out the function of central administration and/or custodian, the auditor must itself undertake the verifications and controls detailed in the pre-mentioned paragraphs. In that case the auditor of the UCI will have to advise the board of directors of the UCI or the management company of the UCI that it needs to have access to certain information on the entity concerned in order to carry out the verifications and audits required by this circular. The board of directors of the UCI or of the management company of the UCI must in that case request the entity concerned to provide access

to the information which is necessary for the auditor of the UCI to accomplish its mission.

For common funds the management of which is performed by a management company, the auditor of the UCI will have to carry out certain audits and verifications as defined under paragraph 1.3. hereafter. The auditor of the UCI may for these tasks refer to the long form report of the auditor of the management company if such report covers at least the items detailed under paragraph 1.3. In case it does not make use of that possibility, it must call upon the board of directors of the management company of the common fund. The board of directors of the management company must then make available to the auditor all information necessary in relation to the activities exercised by the management company for the common fund and, in case the management company has delegated certain important administration functions to a specialised entity, the board will have to request that entity to provide access to the information required.

It also must be noted, that in case the various central administration functions are performed by more than one professional of the financial sector, the auditor of the UCI must give its opinion on the procedures regarding the coordination and general supervision of the activities of the UCI.

In respect of the relationship of the UCI with other service providers established in Luxembourg and/or abroad, reference is made to paragraph 1.4. below.

1.1. Central administration

1.1.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the central administration

The auditor of the UCI must, in its long form report, specify the audit report of the auditor of the central administration he has relied upon. He must in this context provide the following data:

- the name of the auditor of the central administration
- the date of the audit report
- if applicable, the audit report in accordance with international standard ISA 402, type B or in accordance with US standard SAS 70, type 2, or in accordance with any other equivalent standard, as well as the name of the auditor which has established that report.

In cases where the central administration functions are fulfilled by more than one entity, the auditor of the UCI has to indicate in its long form report the data mentioned hereabove in respect of each of these entities individually.

1.1.2. Situation where the audit and verifications are made by the auditor of the UCI

1.1.2.1. Assessment of procedures

In its long form report, the auditor must indicate the exact functions performed by the central administration on behalf of the UCI. In case these functions are split among more than one professional of the financial sector and/or management body of the fund, the auditor must in its report indicate the allocation of the tasks between the different parties.

The auditor must specify if the central administration or the different parties are in possession of a procedures manual describing the functions which they perform on behalf the UCI and which are, *inter alia*, set forth in chapter D. of IML Circular 91/75.

In addition, the auditor has to verify if specific procedures have been established in connection with the following items:

a) internal control procedure on the origin of funds (anti-money laundering procedures),

b) valuation procedure of the portfolio by the accounting agent, distinguishing between the different types of investment and insisting in particular on unquoted and illiquid securities,

c) Internal control procedures on the investment policy and restrictions,

d) internal control procedure on the accuracy of the NAV calculation,

e) recording and settlement procedure of subscription/redemption orders of units/shares,

f) validation and recording procedure in relation to the acquisition and sale of securities.

The auditor must give its opinion on the adequacy of the procedures put in place.

Finally, the auditor must indicate if the human resources made available are sufficient to ensure a proper execution of the contractual obligations of the entity for the relevant UCI.

In case of splitting of the central administration functions, it goes without saying that, in addition, the auditor must give its opinion on the procedures regarding the coordination and the general supervision of the activities of the UCI.

1.1.2.2. Computer systems

As regards computer systems, the auditor will give a brief description of the software used by the central administration and of the functions for which the software is used.

The auditor must indicate whether, during the financial year under review, significant changes have occurred with respect to the computer system and whether problems were encountered at the time of migration from one system to another.

The auditor must also give its opinion on the adequacy of the computer system in consideration of the volume of the activities of the relevant UCI and, if applicable, in respect of pooling or co-management techniques.

With regard to the accounting system for the calculation of the NAV, the auditor will give its opinion on whether the accounting system is adequate in view of the type of investments made by the UCI. Manual accounting operations and valuations and the internal control procedures relating thereto must be pointed out.

The auditor must also verify if appropriate measures to safeguard the confidentiality of information have been put into place.

In addition, the auditor must outline the general principles of the contingency plan in place which should permit the central administration to operate normally in case of a breakdown of its computer systems, including its Internet connections.

When use is made of an external processing unit, whether based in Luxembourg or abroad, the auditor must clearly indicate which functions have been sub-delegated and to whom.

The auditor must furthermore give its opinion on compliance with the provisions of item III.1. of chapter D. of IML Circular 91/75.

Generally, the auditor must highlight the significant deficiencies which it will have detected during its audit and must describe them in a detailed manner so that the CSSF can assess the situation.

1.2. Custodian

1.2.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the custodian

The auditor of the UCI must in its long form report, specify the audit report of the auditor of the custodian he has relied upon. He must in this context provide the following data:

- the name of the auditor of the custodian
- the date of the audit report
- if applicable, the audit report in accordance with international standard ISA 402, type B, or in accordance with US standard SAS 70, type 2 or in accordance with any other equivalent standard, as well as the name of the auditor which has established the report.

The auditor of the UCI must in any case give its opinion on the result of the reconciliations between assets accounted for by the UCI and the assets deposited with the custodian as well as on the off-balance sheet operations of the UCI.

In case the auditor, during its audit, notes serious problems at the level of the reconciliation between the positions accounted for by the UCI and those registered with the custodian, it must make a detailed description of those problems in the long form report.

1.2.2. Situation where the controls and verifications are made by the auditor of the UCI

1.2.2.1. Assessment of procedures

The long form report indicates if the entity is in possession of a procedures manual describing the duties of the custodian and whether this manual includes general procedures and specific procedures relating to the activities undertaken.

The long form report will describe in particular the correspondent bank network. The long form report will describe the policy of the entity as regards the selection criteria of those counterparties. The auditor will give an outline of the third parties with which the entity has entered into a relationship and it will indicate if these counterparties have been retained in accordance with the policy of the entity.

In case the custodian exercises also part or all of the central administration functions, the long form report has to provide explanations on the separation of duties, specifically between custody and central administration duties.

In case the auditor notes deficiencies, the auditor will have to indicate exactly which obligation(s) the custodian has not complied with.

1.2.2.2. Computer Systems

As regards computer systems, the auditor will give a brief description of the software used by the custodian.

The auditor must indicate whether, during the financial year under review, significant changes have occurred with regard to the computer system and whether problems were encountered at the time of migration from one system to another.

The auditor must give its opinion on the adequacy of the computer system and the available human resources for ensuring the proper execution by the credit institution of its contractual obligations towards the UCI concerned.

1.2.2.3. Result of the reconciliations

The auditor must indicate whether the custodian has established procedures concerning the reconciliation of positions accounted for by the UCI and those registered with the custodian. It will also give an opinion on the adequacy of those procedures.

The auditor must give its opinion on the results of the reconciliation between the positions accounted for by the UCI and the positions registered with the custodian.

In case the auditor would during its audit identify serious problems as regards the reconciliation between the positions accounted for by the UCI and those registered with the custodian, the auditor must give a detailed description of the problems in the long form report.

1.3. Relationship with the management company

The auditor verifies whether the management company assumes its functions in compliance with legal and contractual obligations.

It indicates in its long form report which functions are performed by the management company on behalf of the UCI. To the extent that the management company performs all or part of the administration functions, the auditor has to proceed as provided for under item 1., paragraph 1.1.1. or 1.1.2. hereabove.

In case the auditor becomes aware of major problems, it has to provide a detailed description of those problems in the long form report.

1.4. Relationship with other intermediaries

In the context of the relationship of the UCI with other intermediaries, comprising *inter alia* the investment managers, the distributors, etc., the auditor must indicate in its long form report if the activity of the UCI has been hindered by major problems encountered in the course of the operations conducted with these other intermediaries.

If this is the case, the auditor must describe in a detailed manner the problem(s) encountered during its analysis in order to enable the CSSF to assess the situation.

2. Audit of the operations of the UCI

2.1. Audit of anti-money laundering rules

As the central administration of a UCI deals with subscription, redemption and transfer requests of units or shares of UCIs, it has to ensure compliance with the provisions set forth in the Circulars relating to the fight against money laundering, comprising Circulars IML 94/112, BCL 98/153, CSSF 00/21, CSSF 01/40 and CSSF 02/78.

IML Circular 94/112 has however taken into account the specific manner in which UCIs are marketed, by dispensing the central administration of a UCI in Luxembourg under certain conditions from the obligation to carry out itself the identification of investors in case it makes use of professionals of the financial sector subject to identification obligations equivalent to those provided for by Luxembourg law. In this context, it has to be reminded that in respect of all intermediaries participating in the placement of the units or shares of UCIs, the central administration has to systematically verify the conditions provided for by Circular IML 91/112 concerning equivalent identification. That verification has to cover *inter alia* the status of the intermediary and its submission to the FATF recommendations. If the conditions of an equivalent identification provided for by Circular IML 94/112 are not met, the central administration of the UCI in Luxembourg must itself carry out the identification of the investors in the UCI.

On the basis of the description provided by the central administration, the auditor must analyse the distribution channel of units or shares of the UCI in order to determine if the central administration complies with its obligations concerning the fight against money laundering.

In addition, the auditor must check whether the central administration supervises abnormal transactions.

In this context, the auditor has to indicate its method of selection of sample files checked and the percentage of the total transactions covered.

In case a non-compliance is noted, the auditor will have to provide precise indications to the CSSF enabling it to make an appreciation of the situation (number of files which are incomplete, detail of the failures noted, etc.).

In case the auditor of the UCI makes use of the possibility to base itself on the audit report of the auditor in charge of the review of the entity which is responsible for compliance with anti-money laundering rules, the long form report must provide the following details:

- name of the auditor of the entity in question

- date of the audit report

2.2. Valuation methods

The Law of 30 March 1988 provides that, unless otherwise provided for in the management regulations or the articles of incorporation, the valuation of the assets shall be based ‘in case of officially quoted security' on the latest known stock exchange quotations unless such quotations are not representative. For securities not so quoted and for securities which are so quoted but for which the latest quotation is not representative, these articles provide that the valuation must be based on the probable realisation value which must be estimated with care and in good faith.

The auditor will thus check if the valuation methods are applied in accordance with the procedures and the rules determined by the management regulations or the articles of incorporation and if these methods are also applied in a consistent manner.

The auditor must *inter alia* verify the application and the sincerity of the valuation rules of the securities portfolio, securities' lending/borrowing, [repurchase and reverse repurchase agreements, sale with right of repurchase agreements,] transactions, futures', swaps and options.

In connection with the valuation of portfolio securities, it must in particular insist n unquoted securities and illiquid securities.

In addition, the auditor will request the board of directors of the UCI or the management company of the UCI to provide details on the transactions undertaken by the UCI to enable the auditor to verify by sample tests if these transactions were undertaken at arm's length.

In case of non-compliance with the valuation methods described in the procedures or in the management regulations or the articles of incorporation, the auditor must provide detailed information enabling the CSSF to assess the situation.

2.3. Control of the risk management system

The board of directors of the UCI or of the management company of the UCI is supposed to have put into place the necessary controls to ensure compliance with the investment restrictions and policies of the UCI as well as the management of the risks encountered by the UCI. Either it assumes itself all or part of the above mentioned controls or it delegates this duty to one or several third parties.

The auditor must indicate the responsible persons/entities appointed by the board of directors of the UCI or the board of directors of the management company of the UCI which are entrusted with the control of the different risks for which the UCI is exposed. The auditor will also have to specify the frequency with which risk controls are made.

The long form report must indicate whether the control system put into place within those entities covers at least the risks inherent to the policy and the investment risks of the UCI concerned, such as:

- credit/counterparty risk
- market risk
- settlement risk
- foreign exchange risk

If appropriate:

- interest rate risk
- liquidity risk
- risk on derivative instruments

The long form report must provide an analysis and an assessment of the systems put in place by the UCI to control and manage the different risks to which the UCI is exposed when it carries out its activities.

If shortfalls are noted, the auditor must give precise indications enabling the CSSF to assess of the situation.

2.4. Specific audits

In the context of his mission, the auditor must also proceed to specific audits. These are the audit of the compliance with the investment policy and the investment restrictions and the audit of the calculation of the NAV.

The auditor must under this item analyse every NAV calculation error and every non-compliance with the investment rules for which the amount of indemnification did not exceed EUR 25,000 and for which the amount to be reimbursed to any one investor did not exceed EUR 2,500 as set out in CSSF Circular 02/77.

Under this item, the auditor must also indicate the following:

- material errors which the auditor has detected during its mission and which should have been notified in accordance with the provisions of CSSF Circular 02/77;
- cases of non-compliance which the auditor has detected during its mission and which should have been notified in compliance with the provisions of CSSF Circular 02/77.

In those cases, the auditor will in its long form report describe the material errors and the cases of non-compliance with investment rules identified during its audit and which have not been notified to the CSSF in compliance with CSSF Circular 02/77. The auditor will thereafter deal with these errors and

cases of non-compliance with the investment rules in accordance with the procedures set forth in CSSF Circular 02/77.

In case no significant NAV error or case of non-compliance with the investment policy will have been identified, the auditor must expressly state so in its long form report.

2.5. Assets and liabilities and profit and loss account

The auditor will comment the different items of the consolidated[6] balance sheet in a clear and precise manner. The auditor must check the existence of those items, their amounts and their adequate accounting treatment, as well as the consistent application of accounting principles.

In addition, the auditor must examine the sale and purchase transactions of securities made during the two weeks preceding and the two weeks following the end of the financial year (this period needs to be extended if suspicious operations have been detected), in order to determine whether transactions have been entered into for the purpose of "window dressing"

Furthermore, the auditor will have to collect statistics on portfolio turnover in order to make an appreciation whether transactions have been entered into for the purpose of "churning".

The auditor must also to comment on the various items of the combined profit and loss account. The auditor will have to check the existence of those items, their amounts and their adequate accounting treatment, as well as the consistent application of the accounting principles.

During its mission, the auditor will have to pay particular attention to the performance fees which may be payable to the investment managers.

The auditor will also have to receive from the board of directors of the UCI or of the management company of the UCI a confirmation to the effect that neither the investment managers nor any of their connected parties have received rebates from brokers and a confirmation on any arrangements concerning the payment of "soft commissions" in the context of the activities of the UCI. In case "soft commissions" are paid, the auditor will have to describe in the long form report the arrangements in relation thereto.

In addition, the auditor will need to receive from the board of directors of the UCI or the management company of the UCI a confirmation indicating whether there have been any commission rebates and, in the affirmative, describe the nature thereof.

Finally, the auditor will ask for a list of all costs, comprising transaction costs, which have been allocated to the UCI. It is recommended that this list refers where possible to the gross amount of the costs payable by the UCI. In relation to the most significant costs, the auditor will have to determine whether they have been calculated in compliance with the provisions of the applicable agreements.

In case of irregularities or shortfalls, the auditor will have to provide precise indications enabling the CSSF to assess the situation.

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[6] UCIs are not required to produce consolidated accounts. What is meant here is the combined balance sheet of the UCI multiple compartment UCIs consisting in the combination of the balance sheets of each compartment.

2.6. Publication of the NAV

The auditor shall indicate if the UCI has published its NAV in accordance with Article 92 of the Law of 30 March 1988.

In case of non-compliance with this legal requirement, the auditor will indicate in detail the origin of this shortfall.

3. Internet

The long form report will indicate whether the UCI makes directly use of the Internet as a communication or distribution channel.

4. Complaints from investors

The auditor will query with the board of directors of the UCI or of the management company of the UCI whether, during the course of the financial year under review, complaints have been received by the central administration in Luxembourg and to which the UCI had to respond.

If this is not the case, the auditor will specifically mention this in its long form report.

If complaints have been received, the auditor will indicate how many complaints have been received by the UCI in Luxembourg.

5. Follow-up on problems identified in preceding reports on the audit of the activities of the UCI

The auditor indicates in this part of its long form report the follow-up on irregularities and important weaknesses identified during its preceding auditors and which are detailed either in an earlier long form report or in a separate management letter addressed to the board of directors of the UCI or of the management company of the UCI (see also chapter III.A. "General Principles" hereabove).

6. General conclusion

In its general conclusion the auditor must give its opinion on all the important items of its control in order to give a general view on the situation of the UCI.

More specifically, the auditor must summarise the main comments and conclusions contained in the long form report. It will also indicate the main recommendations and observations made to the board of directors of the UCI or the management company of the UCI as well as the latter's response thereto. In case the auditor issues a separate management letter to the board of directors of the UCI or of the management company of the UCI, it is sufficient that the general conclusion refers, for this part, to that document which, in such case, must be annexed to the long form report (see also chapter III.A. "General Principles" hereabove).

IV. Reporting to the CSSF pursuant to article 89(3) of the law relating to UCIs

In compliance with paragraph (3) of article 89 as amended of the law on UCIs, introduced by the Law of 29 April 1999[7], the auditor must report to the CSSF any fact or decision it has become aware while carrying out the audit of the accounting information contained in the annual report of an UCI or any other legal task concerning an UCI where such fact or decision is liable to:

- constitute a material breach of the provisions of the law on UCIs or the regulations adopted for its execution, or
- affect the continuous functioning of the UCI, or
- lead to a refusal to certify the accounts or to the expression of reservations therein.

The auditor shall likewise have the duty to report to the CSSF any fact or decision concerning the UCI and meeting the criteria mentioned hereabove of which it has become aware while carrying out the audit of the accounting information contained in the annual report of another undertaking having close links resulting from a control relationship with the UCI for which it carries out a legal task or while carrying out any other legal task concerning such other undertakings.

"Close link" resulting from a control relationship shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in article 77 of the amended Law of 17 June 1992 relating to the annual accounts and the consolidated accounts of credit institutions or as a result of a relationship of the same type between any individual or legal entity and an undertaking; any subsidiary undertaking of a subsidiary undertaking is also considered a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more individuals or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

In addition, if in the discharge of its duties the auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the UCI does not truly describe the financial situation and the assets and liabilities of the UCI, it shall be obliged to inform the CSSF forthwith.

The auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the auditor has or ought to have knowledge in connection with the discharge of its duties. The same applies if the auditor ascertains that the assets of the UCI are not or have not been invested according to the regulations set out by the law or the prospectus.

In return for the duty to report to the CSSF, paragraph (3) also provides that any disclosure in good faith to the CSSF by the auditor of any fact or decision referred to in paragraph (3) does not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and will not result in liability of any kind of the auditor.

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[7] Law of 29 April 1999
- implementing directive 95/26/EC concerning the reinforcement of prudential supervision into the Law of 5 April 1993 relating to the financial sector (as amended) and into the Law of 30 March 1988 on undertakings for collective investment (as amended);
- partially implementing Article 7 of Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions into the Law of 5 April 1993 relating to the financial sector (as amended);
- operating certain other amendments to the Law of 5 April 1993 relating to the financial sector (as amended);
- amending the Grand-Ducal Regulation of 19 July 1983 relating to fiduciary contracts of credit institutions.

V. Final provisions

The provisions of the present circular have to be complied with in their entirety for the annual accounts of the financial years ending on or after 31 December 2003.

30.

CSSF CIRCULAR 02/77

RELATING TO THE PROTECTION OF INVESTORS IN CASE OF NAV CALCULATION ERROR AND CORRECTION OF THE CONSEQUENCES RESULTING FROM NON-COMPLIANCE WITH THE INVESTMENT RULES APPLICABLE TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CSSF Circular 02/77 relating to the protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment

Luxembourg, 27 November 2002

All Luxembourg undertakings for collective investment and all parties involved in the operation and supervision of such undertakings

CSSF CIRCULAR 02/77

Re: Protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment

Ladies and Gentlemen,

The purpose of this circular is to set out the minimum rules of conduct to be followed by collective investment professionals in Luxembourg in case of errors in the administration or management of the undertakings for collective investment ("UCIs") for which they are responsible.

Errors which occur in practice are essentially those resulting from the incorrect calculation of the net asset value ("NAV") or from non-compliance with the investment rules applicable to UCIs. In most cases, non-compliance is caused either by investments which are not in compliance with the investment policy which the UCIs define in their prospectus or because of a breach of the investment or borrowing restrictions provided for by law or their prospectus.

It is the responsibility of the UCIs' promoters to ensure that any errors are correctly dealt with in strictest compliance with the rules of conduct specified in this circular. This is of a primordial importance not only because the interests of the UCIs and/or of the investors having suffered a loss need to be protected, but it must be ensured that investors maintain their trust in the integrity of collective management professionals which exercise their activities in Luxembourg and the effectiveness of the supervision exercised over UCIs.

The corrective and compensatory actions to be taken in case of NAV calculation errors or in case of non-compliance with the investment rules applicable to UCIs are separately dealt with under sections I. and II. hereafter. That presentation is necessary to take account of the fact that the circular takes a different approach to deal with losses in each of the two situations.

This Circular replaces and supersedes CSSF Circular 2000/8 of 15 March 2000.

I. The treatment of NAV calculation errors

1. Definition of a calculation error

It is reminded that the NAV per unit/share of UCIs is obtained by dividing the value of their net assets, meaning assets less liabilities, by the number of units/shares outstanding.

Unless provided differently in their constitutional documents, the valuation of the assets of UCIs, whose investment policy provides for the investment in transferable securities, must be based, in case of securities admitted to official stock exchange listing, on the last known price on such stock exchange, unless such price is not representative. Securities which are not so listed or securities which are so listed but of which the last price is not representative, are valued on the basis of the reasonably foreseeable sale's price which must be determined prudently and in good faith.

It is presumed that the NAV is correctly calculated where the rules provided for its determination in the constitutional documents and prospectus of the UCI are strictly applied, consistently and in good faith, on the basis of the most current and most reliable information available at the time of the calculation.

An error in the NAV calculation occurs as a result of one or more factors or circumstances which cause the calculation to yield an incorrect result. Generally, these factors and circumstances are related to inadequate internal control procedures, management shortfalls, imperfections or deficiencies in the operation of the IT, accounting or communication systems as well as to non-compliance with the valuation rules provided in the constitutional documents and the prospectus of UCIs.

2. The materiality concept in the context of the NAV calculation errors

It is generally recognised that the NAV calculation process is not an exact science and that the result of the calculation constitutes the closest possible approximation of the true market value of the assets of a UCI. The level of precision with which the NAV is calculated will indeed depend on a series of external factors more or less linked to the complexity of each particular UCI such as volatility of the markets on which an important part of the assets of the UCI are invested in, the availability at the appropriate time of up-to-date information on market prices and/or other elements relevant for the calculation of the NAV as well as the reliability of the price information sources used.

In consideration of these factors, it is accepted in the majority of the principal collective management industry centres that only those calculation errors, which have a material impact on the NAV and whose proportion compared to the NAV reaches or exceeds a certain threshold, referred to as the materiality or tolerance threshold, must be notified to the CSSF and corrected in order to protect the interests of the investors concerned. It is indeed considered that in all other cases, the immateriality of the errors does not justify the recourse to relatively long and costly administration procedures which must be put into place in order to recalculate incorrect NAVs and indemnify affected investors.

Following the use and practices adopted abroad, this circular introduces the materiality concept for Luxembourg UCIs whilst determining acceptable tolerance thresholds at different levels depending on the type of UCI concerned by the NAV calculation error. This differentiating approach is justified to the extent that the implicit level of imprecision in each NAV calculation can vary from one type of UCI to the next by virtue of the external factors referred to above and in particular market volatility. That factor is indeed of a primordial importance in this context as it is generally admitted that the volatility of a market depends to a large extent on the risks associated with the financial assets dealt on that market and that such volatility increases depending on whether those assets are money market instruments, bonds/debt securities or shares and other types of securities.

In conformity with that approach, different tolerance thresholds are provided for UCIs which invest in money market instruments and/or cash assets ("money market UCIs/cash funds"), UCIs which invest in debt obligations or similar debt instruments ("bond UCIs"), UCIs which invest in shares and/or financial assets other than those referred to above ("equity or other financial assets' UCIs") and UCIs which follow a mixed investment policy ("mixed UCIs").

For each of these types of UCIs the tolerance threshold is specified hereunder:

money market UCIs:	0.25% of NAV
bond UCIs:	0.50% of NAV
shares and other financial assets' UCIs:	1.00% of NAV
mixed UCIs:	0.50% of NAV.

The introduction of the materiality concept does not mean that UCI promoters will in case of calculation errors be obliged to apply the tolerance thresholds specified above. Promoters are on the contrary free to apply less high tolerance thresholds or even not apply any at all.

It is the responsibility of the governing bodies of Luxembourg UCIs whose units/shares of are admitted to distribution abroad to ensure that the tolerance thresholds they propose to adopt in case of NAV calculation errors are not in conflict with the requirements that may be applicable in those circumstances in the countries of distribution.

3. Procedures to be followed for the correction of calculation errors which have a material impact on the NAV.

The indications given under the points below relate to the principal stages of the correction process and fix the detail of the rules of conduct to be followed in the correction of the calculation errors whose impact on the NAV reaches or exceeds the acceptable tolerance threshold and which are thereby considered to constitute material errors. These rules of conduct concern in particular

- the information to be furnished to the promoter and the custodian of the UCI and to the CSSF;
- the determination of the financial impact of the calculation errors;
- the indemnification of the damages which result from the calculation errors for the UCI and/or its investors;
- the implication of the independent auditor in the monitoring of the correction process;
- the communications to be made to those investors which have to be indemnified.

Significant errors not only means isolated calculation errors which have a significant impact on the NAV but also non-correction processed simultaneous or successive calculation errors which each remain below the acceptable tolerance threshold but which if considered on an aggregate basis reach or exceed that threshold.

The correction procedures must form on integral part of the internal control procedures which the central administration of UCIs must put into place to limit as much as possible the risk for calculation errors and detect any errors that occur.

a) The information to be furnished to the promoter and the custodian of the UCI and to the CSSF

As soon as a significant calculation error is discovered, the central administration of the UCI must immediately advise the promoter and the custodian of the UCI as well as the CSSF of the occurrence of the error and

submit to the promoter and the regulator a corrective action plan dealing with the steps which are proposed or have been taken to cure the problems which have caused the ascertained calculation error and to put into place the improvements to the administrative and control structures which are necessary to avoid the subsequent occurrence of the same problems.

The corrective action plan must also specify the steps which are proposed or which have been taken to

- identify way the different categories of investors who are affected by the errors in the most appropriate,
- recalculate the NAVs which have been applied to subscription and redemption requests received during the period starting on the date on which the error became significant and the date on which it was corrected ("the error period");
- determine, on the basis of the recalculated NAVs, the amounts which have to be repaid to the UCI and the amounts payable by way of indemnity to investors who have suffered a loss as result of the error;
- notify the error to the supervisory authorities of the countries in which the units/shares of the UCI are authorised for distribution, to the extent the latter so require;
- notify the error to the investors who have to be indemnified and inform them on the steps that will be put into place for indemnifying their losses.

If, following an NAV calculation error, the indemnification amount does not exceed EUR 25,000 and the amount to be reimbursed to an investor does not exceed EUR 2,500, no corrective action plan as detailed hereabove needs to be submitted to the CSSF. In that case the central administration must notify the occurrence of the material calculation error to the CSSF and must quickly take the measures necessary for correcting the calculation error and for arranging the indemnification of the damages incurred as provided in items b), c), and e) hereafter.

b) The determination of the financial impact of significant calculation errors

In case of a material calculation error, the central administration of the UCI must as quickly as possible take the steps necessary to correct the error. In particular it must recalculate the NAVs which have been determined during the error period and quantify the loss for the UCI and/or its investors on the basis of the corrected NAVs provided however that the recalculation of incorrect NAVs is required only in case subscription or redemption requests have been processed during the error period.

In determining the financial impact of calculation errors, the central administration of the UCI must fundamentally distinguish between

- investors which have joined the UCI before the error period and which have redeemed their units/shares during such period and
- investors which have joined the UCI during the error period and which continued to hold their units/shares after such a period,

provided that investors other than those belonging to the above categories may be affected depending on actual circumstances.

The indications below give an overview of the situation of the UCI and the concerned investors in the following cases:

Cases where the NAV is undervalued.

In that case

- investors which have joined the UCI during the error period and which have redeemed their units/shares during such period, must be indemnified of the difference between the recalculated NAV and the undervalued NAV which was applied to the redeemed units/shares;

- the UCI must be indemnified of the difference between the recalculated NAV and the undervalued NAV which has been applied to units/shares subscribed to during the error period and which remained outstanding beyond that period.

In case the NAV is overvalued.

In that case

- the UCI must be indemnified of the difference between the overvalued NAV which was applied to units/shares redeemed during the error period but which were subscribed to before that period and the recalculated NAV;

- investors which have joined the UCI during the error period and which have held their units/shares beyond such period must be indemnified of the difference between the overvalued NAV applied to the units/shares subscribed to and the recalculated NAV.

The investors having suffered a loss as a result of a calculation error may be indemnified out of the assets of the UCI in case the payments due to the relevant investors correspond to excess sums within the assets of the UCI and the payment of which can therefore not affect the interests of the other investors. It remains nevertheless that the central administration of the UCI or as the case may be its promoter may decide to themselves support the payments necessary to indemnify affected investors.

There is an open issue as to whether the UCI affected by a calculation error has the right to require investors who have involuntarily benefited from that error to subsequently pay to the UCI the amount not paid by them in respect of units/shares subscribed by them on the basis of an undervalued NAV or to repay the excess of the sums received by them in respect of units/shares redeemed at an overvalued NAV. Since this is a controversial issue to which no clear response can be given in the absence of a court precedent, it is not recommended to call upon the investors concerned to indemnify the UCI for its losses, unless the beneficiaries are institutional investors or other sophisticated investors who accept in full knowledge of the circumstances to cover the loss of the UCI.

In those circumstances, it is in principle the obligation of the central administration of the UCI or as the case may be of its promoter, to make the payments due to the UCI in lieu of the investors who have benefited from the error. This solution is particularly justified because any claim on the investors having benefited from the error could have a negative effect on the promoter's reputation and result therefore in a non negligible commercial prejudice for the promoter.

As soon as the operations consisting in the recalculation of the incorrect NAVs and the computation of the losses resulting from the calculation error for the UCI and/or its investors have been concluded, the central administration of the UCI must make the entries in the accounts of the UCI which are necessary to reflect the payments to be received and the payments to be made to the UCI.

c) The correction of the consequences for the UCI and/or its investors of calculation errors

The compensation for damages is only compulsory by reference to the specific dates on which NAV calculation errors were significant. Insofar as other dates are concerned, it is the responsibility of the governing bodies of the UCI to determine whether it is necessary to determine the financial impact of the error and establish an indemnification plan.

The central administration of the UCI must diligently put into place the measures provided for in the correction plan referred to in item a) above for the recalculation of the incorrect NAVs and the determination of the loss suffered by the UCI and/or the affected investors.

It must also act with diligence in the organisation of the indemnity payments due to the UCI and/or the affected investors provided however that these payments can only be made after the auditor has completed his special report referred to in item d) below.

In order to accelerate the process of calculation error correction, the central administration of the UCI can initiate the different stages of that process without having obtained the prior consent of the supervisory authority. It suffices in that case that the supervisory authority is informed of the steps taken subsequently thereto.

If, following an NAV calculation error, the total indemnification amount does not exceed EUR 25,000 and the amount to be reimbursed to an investor does not exceed EUR 2,500, the central administration must be diligent in operating the payment of the amounts due as indemnification to the UCI and/or to affected investors as soon as the sums payable as indemnification will have been determined.

It remains however that the CSSF can intervene in the correction process on a subsequent basis if it deems such intervention necessary in order to preserve the interests of the UCI and/or the affected investors.

In most of the main centres for collective management, UCIs are authorised by the supervisory authority to apply the *de minimis* rule to the amounts to which individual investors can pretend.

In accordance with that rule, the UCIs which benefit from such an authorisation may decide not to pay to individual investors sums which do not exceed a specific amount, the level of which is generally fixed as a lump sum figure, referred to as the *de minimis* amount. That lump sum figure is applied in order to avoid that investors who have a right to be paid lesser amounts, end up with no real benefit because of the bank charges (cheque collection charges for cheques issued to their order or bank transfer charges) and other costs they have to bear.

For the reasons specified in the preceding paragraph, Luxembourg UCIs can also take advantage of the *de minimis* rule. This document does however not introduce a single lump sum for the *de minimis* amount Luxembourg UCIs can apply.

It is therefore the responsibility of each UCI to determine, with the approval of the CSSF, the lump sum of *de minimis* amount it intends to apply provided that in determining such lump sum it must take into account the level of bank charges and other costs which are charged to investors to whom payments are made. This approach is justified because a large majority of Luxembourg UCIs are distributed abroad and that the level of those charges can appreciably vary between UCIs depending on the geographic location of investors.

Concerning the indemnification of investors who already hold units/shares at the moment of payment of the amounts due to them, UCIs may decide the attribution to them of new units/shares (or, as the case may be, fractions of units or shares) instead of making a payment by cheque or bank transfer. For those investors, recourse to this particular method of indemnification is even recommended since such investors then avoid the bank charges which would otherwise be charged to them and since it additionally allows a complete indemnification without any consideration being given to the actual amounts they are entitled to, as in those circumstances there is no justification to apply a *de minimis* amount.

It is clear that UCIs which issue new units/shares to indemnify affected investors may not deduct commissions or other entry costs in respect to those units/shares.

Where affected investors have subscribed units/shares through a "nominee", the central administration of the UCI must remit to such "nominee" the amounts which are intended for the relevant investors. In such case, the "nominee" must commit to the central administration that it will forward the amounts received by it to the persons effectively entitled thereto.

The term "nominee" as used herein means an intermediary who intervenes between the investors and the UCI they have selected and who offers nominee services which the investors may use in the conditions set out in the prospectus of the UCI.

The *de minimis* rule can in no case be used to refuse payment to investors of amounts which are less than the *de minimis* amount applicable to such investors in case such investors expressly claim such payment.

d) The implication of the independent auditor in the monitoring of the correction process

At the same time as the central administration notifies the promoter and the custodian of the UCI and the CSSF of the occurrence of a significant calculation error, the central administration of the UCI also notifies the UCI's auditor and instructs him to report on the adequacy of the method it intends to use in order to

- identify the different categories of investors affected by the error;
- recalculate the NAVs applied to subscription and redemption requests received during the error period; and
- determine, on the basis of the recalculated NAVs, the amounts which must be repaid to the UCI and the amounts payable on an indemnity basis to investors who have suffered a significant loss because of the error.

The conclusions of the auditor on the proposed methods must be documented in writing and must be attached to the correction plan referred to in item a) above.

When the calculation error is discovered by the auditor, the auditor must immediately notify the central administration of the UCI thereof and request it to immediately inform the promoter, the custodian and the supervisory authority thereof. If the auditor realises that the central administration does not comply with that request, the auditor must notify this fact to the supervisory authority.

As soon as the central administration of the UCI has carried out the entries in the accounts of the UCI which are necessary to correct the calculation error, the auditor must draw up a special report in which he opines whether the correction process is appropriate and reasonable or not. This opinion must address the following:

- the methods referred to above,
- the incorrect NAVs which have been recalculated,
- the losses suffered by the UCI and/or its investors.

The central administration must forward a copy of the special audit report to the supervisory authority as well as to the supervisory authorities of those countries in which the units/shares of the UCI are admitted for distribution, in case such authorities so request.

Finally, the auditor must establish a confirmation in which he certifies that the amounts due on an indemnity basis to the UCI and/or affected investors have effectively been paid.

A copy of that confirmation must also be forwarded to the CSSF and, as the case may be, the foreign regulatory authorities referred to above.

In the context of an NAV calculation error for which the indemnification amount does not exceed EUR 25,000 and the amount to be reimbursed to an investor does not exceed EUR 2,500, the auditor must review the correction process in the course of its annual audit of the UCI. The auditor must in the report on its review state whether, in its opinion, the process of correction is or is not appropriate and reasonable. This statement must cover the following items:

- the methods referred to above;
- the incorrect NAVs which have been recalculated;
- the losses suffered by the UCI and/or its investors; and
- the payment of the amounts due as indemnification.

e) The communications to be made to those investors which have to be indemnified

Significant calculation errors must be brought to the attention of the investors who are to be indemnified.

If applicable, the communications which are made for that purpose through individual notices or by publication in the press must inter alia include particulars on the calculation error and the steps taken to correct it and to indemnify the UCI and/or the affected investors.

These communications must be submitted in draft form to the supervisory authority and, as the case may be, the supervisory authorities of those countries in which the units/shares of the UCI are admitted for distribution, in case such authorities so request.

4. Responsibility for the costs resulting from the correction operations of a calculation error

The costs caused by the correction operations of a calculation error, including the costs associated with the intervention of the auditor, cannot be charged to the assets of the UCI. These costs must be fully supported by the central administration of the UCI, failing which, by the promoter of the UCI, in each case irrespective of the impact of the error on the NAV.

The auditor will be responsible to ascertain within the framework of the audit of the accounting information contained in the annual reports of the UCI that the costs referred to herein will not be charged to the UCI.

II. The compensation of the consequences resulting from non-compliance with the investment rules applicable to UCIs

Promptly upon discovering a non-compliance with investment rules, the directors[1] of the UCI concerned must take the steps which are necessary to regularise the situation of the UCI caused by such non-compliance.

In case the ascertained non-compliance results from investments which do not comply with the investment policy defined in the prospectus, the UCI must realise those investments.

In case the investment restrictions provided for by law or by the prospectus are breached in circumstances other than those referred to in Article 46 of the Law of 30 March 1988 concerning undertakings for collective investment, the UCI must realise the excess positions.

Where the borrowing limits provided for by law or by the prospectus are breached, the UCI must reduce its borrowings to the authorised limit.

In the three circumstances referred to above, the UCI must be indemnified to the extent of any damage suffered.

In the first two circumstances, the damage must be determined in principle by reference to the loss of the UCI resulting from the realisation of the non-authorised investments. In the third circumstance, the UCI must in principle be indemnified to the extent of its interest and other charges resulting from the non-authorised portion of the borrowings.

In the presence of a number of simultaneous breaches of investment rules, the indemnity, if any, is to be calculated in respect of the net result of the corrective actions concerning all the breaches.

In case the corrective actions have a net positive result for the UCI, it will retain the benefit thereof. In those circumstances, it suffices for the central administration of the UCI to notify the supervisory authority and the auditor.

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[1] The original Circular uses the term *"dirigeant"* which includes directors, managers and officers.

By exception to the preceding principle and to the extent there is adequate justification therefor, methods other than those described above may be used to determine the suffered damage including in particular the method which consists in determining the damage by reference to the performance which would have been realised if the non-authorised investment had been subject to the same fluctuations as the portfolio invested in compliance with the investment policy and the investment restrictions provided for by law or the prospectus.

Provided that the tolerance levels which are provided for NAV calculation errors cannot be applied to damages of UCIs resulting from non-compliance with investment rules.

Because they did not comply with their obligations **i**t is the responsibility of the persons who have caused the losses to ensure that such losses are repaid. In case this principle cannot be applied, the promoters will have to indemnify.

The principles which determine the procedures to be followed for the processing of NAV calculation errors and the treatment of NAV calculation errors for which the total indemnification amount does not exceed EUR 25,000 and the indemnification amount to be paid to one investor does not exceed EUR 2,500 will apply mutatis mutandis in all cases where an UCI suffers a loss as a result of non-compliance with investment rules. The principles referred to herein which have to be applied are in particular those concerning

- the information to be furnished to the promoter and the custodian of the UCI and to the CSSF;
- the identification of the categories of investors which are affected because of the loss suffered by the UCI;
- the determination of the financial impact of the loss for individual investors and the measures to be taken for their indemnification;
- the implication of the independent auditor in the monitoring of the correction process;
- the communications to be made to those investors which have to be indemnified.

As regards the procedures for indemnifying investors, the rules set out in Section **I.** (3) (c) of this Circular will apply.

III. Final Provisions

1. Repealment provision

CSSF Circular 2000/8 is repealed.

2. Entry into force

The provisions of this Circular are immediately applicable in their entirety.

31.

CIRCULAR IML 91/75 (as amended by CSSF Circular 05/177)

RELATING TO THE REVISION AND REMODELLING OF THE RULES TO WHICH LUXEMBOURG UNDERTAKINGS GOVERNED BY THE LAW OF 30 MARCH 1988 ON UNDERTAKINGS FOR COLLECTIVE INVESTMENT ("UCI") ARE SUBJECT

Circular IML 91/75 (as amended by CSSF Circular 05/177) relating to the revision and remodelling of the rules to which Luxembourg undertakings governed by the Law of 30 March 1988 on undertakings for collective investment ("UCI") are subject

Luxembourg, 21 January 1991

To all Luxembourg undertakings for collective investment and to all those that take part in the functioning and control of these undertakings

CIRCULAR IML 91/75

(as amended by CSSF Circular 05/177)

Re: Revision and remodelling of the rules to which Luxembourg undertakings governed by the Law of 30 March 1988 on undertakings for collective investment ("UCI") are subject.

Ladies and Gentlemen,

This Circular repeals and replaces IML Circular 88/48 of 8 April 1988 as well as the previous circulars which remained applicable to UCIs following the entry into force of the aforementioned Law of 30 March 1988.

The Circulars thus repealed, in addition to IML Circular 88/48 of 8 April 1988, are circulars VM/47 of 7 August 1978, VEF/48 of 7 November 1978, IML 84/12 of 8 March 1984, IML 84/13 of 9 March 1984, IML 84/15 of 30 March 1984, IML 85/23 of 25 March 1985 and IML 88/47 of 5 April 1988.

In accordance with its objective of clarification and simplification, the main purpose of this circular is to adapt and to clarify the rules of the repealed circulars in light of the experience acquired during the practical application thereof and to reproduce the rules thus revised in one single text according to the following summary:

SUMMARY

Chapter A. Purpose and scope of the Law of 30 March 1988.

Chapter B. Definition of the meaning of UCI.

I. Criteria by which the meaning of UCI is being defined.

II. Practical application of the criteria retained for the definition of the meaning of UCI.

Chapter C. Classification of UCIs situated in Luxembourg.

I. Definition of UCIs governed by Part I of the Law of 30 March 1988.

II. Definition of UCIs governed by Part II of the Law of 30 March 1988.

III. Status of UCITS (Part I) and other UCIs (Part II) in the European context.

Chapter D. Rules concerning the central administration of Luxembourg UCIs.

I. Definition of the meaning of central administration in Luxembourg.

II. Organisation of the central administration in Luxembourg.

III. Execution of the accounting and administrative duties as defined by the notion of central administration in Luxembourg.

Chapter E. Rules concerning the depositary of a Luxembourg UCI.

I. Conditions of admission to the activity of depositary.

II. General mission of the depositary.

III. Specific duties of the depositary.

IV. Liability of the depositary.

Chapter F. Rules applicable to UCITS governed by Part I of the Law of 30 March 1988.

I. Intervals at which the issue and redemption prices must be determined.

II. Redemption by UCITS of their units or shares.

III. Requirements in respect of the composition of assets.

IV. Borrowings.

V. Investment limits calculation method as established by Chapter 5 of the Law of 30 March 1988.

Chapter G. Rules applicable to UCITS subject to Part II of the Law of 30 March 1988.

I. Intervals at which the issue and redemption prices must be determined.

II. Investment limits.

III. Borrowings.

IV. Provisions applicable to UCITS which are subject to Chapter 11 of the Law of 30 March 1988.

Chapter H. Rules applicable to all UCITS.

I. Techniques and instruments relating to transferable securities.

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Chapter A. Purpose and scope of the Law of 30 March 1988.

The purpose of the Law of 30 March 1988 is the protection of the investor who is solicited by promoters whose activity is the raising of funds in order to invest them collectively in accordance with the principle of risk-spreading.

In accordance with its objective, the Law of 30 March 1988 determines the legal and regulatory frame in which this activity may be exercised and pursuant to which it is submitted to the supervision of the *Institut Monétaire Luxembourgeois* ("IML") which is the supervisory authority.

The exercise of the activity subject to the Law of 30 March 1988 is exclusively restricted to those undertakings which qualify as UCIs in accordance with the definition given in Chapter B. hereafter; it therefore follows that such an activity, if exercised in Luxembourg, must be considered as illegal where it is exercised outside the scope of this Law.

On the other hand, an undertaking which in practice, does not meet all conditions for application of the Law of 30 March 1988 may not claim the status of a UCI by voluntarily submitting to the provisions of the Law.

Chapter B. Definition of the meaning of UCI.

I. Criteria by which the meaning of UCI is being defined.

In order to qualify as an activity governed by the Law of 30 March 1988, it is required, and it suffices, that the following conditions are cumulatively met:

- the collective investment of savings;
- the savings used for collective investment must have been collected from the public; - the investment which forms the object of the collective investment must be made in accordance with the principle of risk-spreading.

Collective investment of savings shall be taken to mean the collective investment of funds collected individually from the public. This investment may be made in transferable securities or other assets. The objective is to obtain a yield or a capital gain. Hence the objective of UCIs is not to acquire an interest for a purpose beyond that of obtaining a yield, namely to secure influence or even control. Furthermore, the holding of such an interest entails a long-term holding objective, whereas for UCIs the retention of assets in the portfolio only depends upon the yield or the capital gains potential thereof. By way of exception, certain types of UCIs, such as those investing in venture capital, may sometimes acquire more substantial interests in companies of which they hold shares and even intervene in the management of such companies by the appointment of one or several representatives to the board of directors. Such involvement, however, does not have control as an objective but is dictated by the particular nature of the investments of such undertakings.

The public is solicited when the collection of funds, with the objective of collective investment, is not restricted to a small circle of persons only.

With respect to the principle of risk-spreading, the purpose of its application is to prevent an excessive concentration of the investments in the context of the collective investment.

The aforementioned definition criteria are common to all categories of UCIs provided for by the Law of 30 March 1988. Indeed, depending upon the category to which they belong, UCIs governed by the Law of 30 March 1988 only differ from one another by their legal form or by their collective investment objective.

II. Practical application of the criteria retained for the definition of the meaning of UCI.

In principle there is no problem to determine whether the conditions for application of the Law of 30 March 1988 are met in the cases of common funds ("FCP") and investment companies with variable capital ("SICAV"). In the case of undertakings which do not have the legal form of common fund or SICAV, it is however sometimes difficult in practice to determine whether the Law of 30 March 1988 is applicable to them or not. In such cases, the supervisory authority will in the first instance rely on the definition criteria set out in the preceding Section I. in order to determine whether such undertakings do or do not meet the required conditions for UCI qualification.

If the review of the application file based on these criteria is not sufficient to conclude with the necessary certainty as to whether the Law of 30 March 1988 is applicable, further elements will have to be taken into account such as the organisation and the general structure of such undertakings, i.e. the systematic redemption of shares, the existence of an investment advisory company, the charging of commissions both on the purchase of securities in such undertakings and for the management thereof.

Thus, in application of the preceding principles, financial investment companies set up with the purpose of control, are excluded from the scope of application of the Law of 30 March 1988 because their activity is not the collective investment of savings. The same applies to family holding companies and investment clubs which, even though their objective is the collective investment of savings, do not collect savings from the public.

Chapter C. Classification of UCIs situated in Luxembourg.

A UCI shall be deemed to be situated in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is situated in Luxembourg. UCIs situated in Luxembourg will be referred to hereafter as Luxembourg UCIs.

Depending on their characteristics, Luxembourg UCIs will be subject to Part I or Part II of the Law of 30 March 1988.

This classification makes it possible to distinguish between

- undertakings within the meaning of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the "85/611/EEC Directive"); and

- the other undertakings which do not fall within the scope of application of the 85/611/EEC Directive.

The consequences of this distinction are described in more detail in section III. hereafter.

I. Definition of UCIs governed by Part I of the Law of 30 March 1988.

Part I of the Law of 30 March 1988 applies to all undertakings for collective investment in transferable securities ("UCITS") which are defined as being UCIs the exclusive object of which is the investment in transferable securities.

Considering this definition, the criterion which determines whether a UCI is subject to Part I or Part II of the Law of 30 March 1988 is the intended investment objective. If the undertaking invests in transferable securities, it is subject to Part I, apart from the exceptions referred to in Section II. hereafter.

UCITS subject to Part I of the Law of 30 March 1988 are of the open-ended type, since the rules to which they are subject provide for the obligation to directly or indirectly redeem their units or shares at the request of the investors.

II. Definition of UCIs governed by Part II of the Law of 30 March 1988.

Part II of the Law of 30 March 1988 applies to all UCIs the principal object of which is the investment in securities other than transferable securities and to all UCITS excluded from Part I.

In its Article 2, the Law of 30 March 1988 provides for exceptions to the basic rule reproduced in Section I. above, by excluding from the scope of application of Part I certain categories of UCITS. This is the transposition in national law of the corresponding provisions of the 85/611/EEC Directive.

The following types of UCITS are concerned by this exclusion:

1. UCITS of the closed-ended type.

These UCITS can be defined by distinguishing them from open-ended UCITS which directly or indirectly redeem their units or shares at the request of investors.

The reimbursement to investors after a decision of the management bodies is not tantamount to a redemption if such reimbursement occurred without any request from investors where such a request would have been based on a right to request redemption.

If the securities issued by UCITS of the closed-ended type are redeemed at the request of investors after a certain date, such an undertaking shall fall within the scope of application of Part I of the Law of 30 March 1988 from such date onwards, unless it belongs to one of the other categories of UCITS described in paragraph 2. to 4. hereafter. In case this feature is established at inception, the prospectus must from the outset draw the investors' attention to that fact and to the eventual consequences thereof, particularly on the investment policy.

A UCITS, the constitutional documents of which provide for the right of investors to request redemptions, cannot qualify as being of the closed-ended type and as such falls outside the scope of application of Part I of the Law of 30 March 1988, upon the grounds that it provides for limitations on the exercise of such a right. As a UCITS subject to the provisions of Part I, it must relinquish such limitations insofar as their purpose is to subject the exercise of the right to redeem to conditions and procedures which render redemptions practically impossible or unnecessarily and arbitrarily complicated or provide for unnecessary and arbitrary intervals.

2. UCITS which raise capital without promoting the sale of their units or shares to the public within the European Economic Community ("EEC") or any part of it.

The exclusion from Part I of the Law of 30 March 1988 does not dispense the UCITS concerned from the condition of the collection of public savings which all undertakings must comply with in order to qualify as a UCI; it simply prohibits the UCITS in question to engage in any promotional activity within the EEC; the term "promotional activity" refers in particular to the use of advertisement methods such as press, radio, television or advertisement circulars. It does not however refer to offers for subscription which are addressed to a limited, particularly knowledgeable circle of investors such as pension funds and insurance companies.

It follows from the above that the UCITS concerned hereby are those which, even though they are addressed to the public, refrain from performing any promotional activity within the EEC.

3. UCITS whose units or shares, as restricted by their constitutional documents, may only be sold to the public in countries which are not members of the EEC.

UCITS whose units or shares are listed on the Luxembourg Stock Exchange and whose units or shares are marketed solely outside the EEC fall into this category.

The supervisory authority does not intervene in the delimitation of the scope of application. The exclusion only operates subject to the condition that the management regulations or the articles of incorporation of these UCITS provide expressly that the sale of their units or shares is limited to the public of countries which are not members of the EEC.

4. Categories of UCITS determined by the supervisory authority for which the rules laid down in Chapter 5 of the Law of 30 March 1988 are inappropriate in view of their investment and borrowing policies.

UCITS covered by this exclusion belong to one of the following categories:

4.1. Undertakings the investment policy of which provides for the investment of 20% or more of their net assets in venture capital. Investment in venture capital shall be taken to mean investment in securities of companies which have been recently constituted or which are still in the early development stage.

4.2. Undertakings the investment policy of which provides for the investment of 20% or more of their net assets (other than liquid assets) in securities other than the transferable securities provided for in Article 40(1) of the Law of 30 March 1988.

4.3. Undertakings the investment policy of which provides for the permanent borrowing for investment purposes of at least 25% of their net assets.

4.4. Undertakings the investment policy of which provides for the investment of 20% or more of their net assets in other open-ended UCIs.

4.5. Undertakings the investment policy of which provides for the investment of 20% or more of their net assets in money market instruments and liquid assets (including any regularly negotiated money market instruments the residual maturity of which does not exceed 12 months) other than the transferable securities provided for in Article 40(1) of the Law of 30 March 1988.

4.6. Undertakings the investment policy of which provides for the investment of 50% or more of their net assets in liquid assets.

4.7. Multiple compartment undertakings, one compartment of which is not subject to Part I of the Law of 30 March 1988 by reason of its investment or borrowing policy.

III. Status of UCITS (Part I) and other UCIs (Part II) in the European context.

For the regulation of UCITS subject to it, Part I of the Law of 30 March 1988 takes as a basis the provisions of the 85/611/EEC Directive. Consequently, these UCITS conform to the entirety of the requirements of those provisions. They thus benefit from the status of EEC UCITS which gives them the right to freely market their units or shares in the whole of the territory of the EEC.

UCIs, other than UCITS governed by Part I of the Law of 30 March 1988, may not rely upon the marketing facilities provided for by the 85/611/EEC Directive since they are excluded from the scope of application thereof. Consequently, where such UCIs wish to market their units or shares in other countries of the EEC, they must comply with the specific conditions to which the authorities of the countries concerned may, as the case may be, subject the authorisation of UCIs which do not have the status of EEC UCITS.

Chapter D. Rules concerning the central administration of Luxembourg UCIs.

Under the provisions of the Law of 30 March 1988, the central administration of all Luxembourg UCIs must be situated in Luxembourg. This requirement ensures that the supervisory authority, the depositary and the réviseur d'entreprises (statutory auditor) may easily perform their respective legal duties.

I. Definition of the meaning of central administration in Luxembourg.

The legal requirement that central administration be situated in Luxembourg implies *inter alia* that:

- the accounts must be compiled, and the accounting documents must be available, in Luxembourg;
- issues and redemptions must be carried out in Luxembourg;
- the register of unitholders must be kept in Luxembourg;
- the prospectus, financial reports and all other documents intended for investors must be established in cooperation with the central administration in Luxembourg; - the correspondence, dispatch of financial reports and of all other documents intended for shareholders or unitholders must be carried out from Luxembourg and in all cases under the responsibility of the central administration in Luxembourg;
- the calculation of the net asset value must be carried out in Luxembourg.

It appears from the preceding list that the meaning of central administration in Luxembourg exclusively comprises accounting and administrative functions. It therefore neither excludes the possibility for Luxembourg UCIs to obtain assistance for the management of their assets from investment advisers established abroad nor does it prevent that the decisions in relation with that management (investment and disinvestment decisions) are made and executed elsewhere than in Luxembourg.

II. Organisation of the central administration in Luxembourg.

A Luxembourg UCI or its management company, where it takes the form of a common fund, is not obliged to perform itself the tasks relating to the accounting and administrative duties of the central administration in Luxembourg.

By means of a service contract, it may indeed entrust the exercise of those duties which essentially concern the execution of the tasks set out in section I. above to a third party established in Luxembourg. Upon the condition that a division of such tasks is not detrimental to the satisfactory performance of the central administration, this third party may delegate the execution of specific tasks to one or more other providers of services established in Luxembourg subject to it ensuring the coordination, general supervision and liability therefor.

It is also conceivable that a Luxembourg UCI may, by means of separate service agreements, organise itself the division of tasks connected to the duties of central administration amongst various providers of services established in Luxembourg provided that in such cases, it is in a position to coordinate and supervise itself the execution of such tasks unless it entrusts such a mission to a duly qualified third- party agent. Such a third-party agent then becomes the interlocutor of the IML in its relationship with the central administration of the relevant UCI.

In both cases, the division of tasks related to the duties of central administration must not result in an excessive fragmentation which renders the exercise of the coordination and general supervisory function difficult if not impossible or which unnecessarily increases costs by unjustified duplication.

For the reasons mentioned above, it is therefore recommended not to envisage constructions or structures that are too complicated or costly.

On the basis of the above, the IML considers that tasks as closely connected as the execution of issues and redemptions and the keeping of the register of unitholders may only be entrusted to one single provider of services. The IML considers furthermore that it is not conceivable to have different providers of services execute activities relating to the same task. Thus for instance, it is not admissible to have more than one provider of services perform the execution of the necessary tasks in relation with the keeping of the accounts.

In organising its relationship with the depositary of the UCI which it administers, the central administration in Luxembourg must, by the operation of appropriate procedures, ensure the proper functionning of information circuits and information flow necessary to obtain upon request from the depositary all information and data required in order to determine the value of the assets and liabilities of the UCI and to calculate the net asset value.

The UCI, in the case where it ensures itself the administration, or the providers of services which may be appointed therefor, must have the necessary infrastructure in Luxembourg i.e. sufficient human and technical means in order to accomplish the entirety of the tasks connected to the duties of central administration in Luxembourg. This implies the locating in Luxembourg of equipment and material used by the central administration as technical support for the execution of its duties.

III. Execution of the accounting and administrative duties as defined by the notion of central administration in Luxembourg.

1. Keeping of the accounts, calculation of the net asset value and availability of core documentation relating to the UCI and its operations.

Where the central administration in Luxembourg uses a remote-access computing network as technical support for the execution of the tasks connected to the keeping of the accounts and/or the calculation of the net asset value (such as operations necessary for the valuation of the portfolio of securities, the determination of the amount of income generated by that portfolio and the conversion in the currency of account of the UCI of assets denominated in another currency), the requirement to locate in Luxembourg the equipment and material necessary for the operation of such an administration does not exclude that the unit which is intended to ensure the processing of accounting and other information which is entered in the network may be situated elsewhere than in Luxembourg.

An eventual location abroad of the processing unit is however subject to the following conditions:

- the central administration must have at its disposal in Luxembourg necessary means to enter information in the processing unit of the remote-access computing network used and to withdraw such information. Its access to the information recorded in the network processing unit must be immediate and unlimited and must *inter alia* permit the instantaneous and full production of any data necessary for normal operations;

- the central administration must be aware of the operating conditions of the processing unit and must give its consent for alterations to its programme;

- the central administration must have the possibility to directly intervene in the processing of information stored in the processing unit;

- information stored in the processing unit must be transferred upon each valuation of the assets, at least once a week and, as the case may be, more frequently, if required for security reasons, on servers which are situated and which may be operated in Luxembourg;

- the promoters must have at their disposal the necessary means to enable the central administration to continue to operate normally in case of exceptional events such as the interruption of the means of communication with the processing unit or the failure thereof for an extended period;

- where the central administration uses the remote-access computing network together with other users which are not involved in the operations of the UCI, the central administration must ensure by the establishment of adequate protection measures that these users may not, at the level of the processing unit, have access to the information concerning the UCI, in order to prevent them from obtaining knowledge of that information or altering or deleting it.

The conditions set out under the first, second, third and last indents above apply *mutatis* mutandis where the network processing unit used is situated in Luxembourg.

In principle, it is the central administration's responsibility to proceed from Luxembourg, as the case may be in cooperation with the depositary, with the operational process necessary to enter the information relating to the operations of the UCI into the remote-access computing network used irrespective of where the processing unit of the network is situated. This does not exclude that portfolio managers established abroad may immediately access the relevant network and set in motion the accounting operations connected to the execution of the decisions taken by them within the scope of their management mandate. Furthermore, it does not exclude that other agents involved in the operations of the UCI may proceed in the same way.

Such intervention by *portfolio* managers and by other agents whose services are being used, is however subject to the following conditions:

- the central administration must ensure by the establishment of adequate protection measures that these agents may not access information other than that which is necessary for the execution of their respective duties notwithstanding the provisions concerning professional secrecy;

- the UCI must install, at management level, supervisory procedures which are able to ensure the regularity of the operations initiated by the portfolio managers with respect to the obligations to which it is subject under the Law of 30 March 1988 as well as under its constitutional documents and prospectus.

Since the central administration in Luxembourg assumes the ultimate liability for the accuracy of the financial information relating to the UCI, it alone is authorised to proceed with the allocations, apportionments and provisions necessary for finalising the calculation of the net asset value, these operations concerning in particular the charges, expenses and taxes borne by the UCI.

The central administration must have at its disposal in Luxembourg all accounting and other documents which constitute the essential documentation of the UCI and which are necessary for:

- the preparation of accounts and valuations;

- the drawing-up of certificates of title and of debt securities;

- the determination of the allocation of units or shares outstanding and

- the general protection of the interests of the UCI such as the depositary agreement, the agreements made with the portfolio managers as well as any other agreements with providers of services involved in the operations of the UCI.

The requirement as to availability in Luxembourg of the essential documentation of the UCI implies that the documents relating to transactions initiated from abroad must immediately be forwarded to Luxembourg.

2. Execution of issues and redemptions.

2.1. Role of the central administration in Luxembourg in connection with the execution of issues and redemptions.

The requirement for issues and redemptions to take place in Luxembourg implies that the performance of the tasks related to the processing of subscription and redemption orders for the securities issued by Luxembourg UCIs, is to be carried out by the central administration in Luxembourg of such UCIs. This means that it is in principle the responsibility of the central administration in Luxembourg to determine the prices at which the subscription and redemption orders must be calculated, to draw up the subscription or redemption contract notes and the certificates of title and to dispatch such documents to the individual investors.

The requirement relating to the execution in Luxembourg of issues and redemptions does not prohibit Luxembourg UCIs from appointing Luxembourg or foreign intermediaries as authorised financial agents and representatives for the issue and redemption of their units or shares.

Such intermediaries are then authorised to collect subscription and redemption orders for the units or shares of the UCIs by which they have been appointed. Subject to the conditions specified under heading 2.2. hereafter, they may participate in the issue and redemption operations either as distributors, nominees or market makers.

It is understood that recourse to the intermediaries referred to above may in no way restrict the ability of investors to deal directly with the UCI of their choice when placing their subscription and redemption orders. It is therefore necessary for UCIs to explicitly and prominently mention this possibility in their prospectus.

2.2. Conditions to which intermediaries are subject before they may participate in issue and redemption operations.

2.2.1. Conditions applicable to distributors.

Distributors are intermediaries who are part of the distribution process set up by the promoters whether they actively participate in the marketing of the securities issued by a UCI or whether they are appointed in the prospectus or in any other document as being authorised to receive subscription and redemption orders on behalf of that UCI.

For the purposes of the processing of the subscription and redemption orders collected by them, the distributors must forthwith transmit to the central administration in Luxembourg the data necessary for the timely completion of the entirety of the tasks related to the processing of such orders.

Where the subscription or redemption orders concern registered securities, it is evident that distributors shall provide the central administration in Luxembourg with the registration data necessary to accomplish on an individual basis the tasks referred to above.

Subject to the provisions of heading 2.3. below, this obligation does not exist in case where the issue and redemption orders relate to bearer securities. In such cases, distributors act in the capacity of subscribers *vis-à-vis* the central administration in Luxembourg. They may therefore aggregate individual subscription and redemption orders and transmit them in the form of a combined order to the central administration in Luxembourg. In doing so, the distributors may, where appropriate after netting, purchase or sell the combined total of all securities subscribed to or redeemed from investors to be followed by the subsequent allocation thereof according to the individual orders received.

It is not necessary for distributors to forward to the central administration in Luxembourg the documentation relating to subscription and redemption orders from investors. However, where such documentation is not forwarded to Luxembourg, the distributors must allow the central administration in Luxembourg to have access thereto without any restriction, in case of need.

Where the distributors are authorised to receive and make settlement payments in respect of the subscription and redemption orders collected by them, they may aggregate and set off individual payments in order to deal on a net basis with the central administration in Luxembourg. This possibility is available for orders relating to registered shares and for orders relating to bearer shares.

In order to facilitate delivery of certificates, a Luxembourg UCI and its depositary may enter into an agreement with the distributors pursuant to which the latter are authorised to hold a stock of unissued certificates. In such cases, the distributors must be duly authorised by an agreement to deliver bearer certificates to subscribers in accordance with the instructions from the central administration in Luxembourg.

2.2.2. Conditions applicable to nominees.

Nominees act as intermediaries between investors and the UCIs of their choice. Where the intervention of a nominee is an integral part of the distribution arrangement set up by the promoters, the relationship between the UCI, the nominee, the central administration in Luxembourg and the investors must be determined by contract which shall provide for their respective obligations. The promoters must nevertheless, ensure that the nominee presents sufficient guarantees for the proper execution of its obligations towards the investors who utilise its services. The intervention of a nominee is only authorised if the following conditions are met:

a) the role of the nominee must be adequately described in the prospectuses;

b) the investors must have the possibility to directly invest in the UCIs of their choice without using a nominee and prospectuses must expressly state this fact;

c) the agreements between the nominee and the investors must include a termination clause which gives the investors the right to claim, at any time, direct title to the securities subscribed through the nominee.

It is understood that the conditions set out under items b) and c) are not applicable in circumstances where the use of the services of a nominee is indispensable or even compulsory for legal, regulatory or compelling practical reasons.

2.2.3. Conditions applicable to market makers.

Market makers are intermediaries which participate for their own account and at their own risk in subscription and redemption transactions on securities issued by UCIs.

Where the organisation of a market by such intermediaries is an integral part of the distribution arrangement set up by the promoters, the relationship between the UCI, the central administration in Luxembourg and the market makers must be determined by contract.

Additionally, the following conditions must be met:

a) the role of the market makers must be adequately described in the prospectuses;

b) the market makers may not act as counterparties to subscription and redemption transactions without the specific approval of the investors initiating the relevant transactions;

c) market makers may not price subscription and redemption orders addressed to them on less favourable terms than those that would be applied to such orders had they been directly processed by the relevant UCIs;

d) market makers must regularly notify the central administration in Luxembourg of the orders executed by them which relate to registered securities, in order to ensure (i) that the data relating to investors is updated in the register of unitholders or shareholders and (ii) that the registered certificates or confirmations of investment may be forwarded from Luxembourg to the new investors.

2.3. Duties of the central administration in Luxembourg and of the marketing intermediaries in respect of the prevention of money laundering of drug trafficking proceeds.

Circular IML 89/57 of 15 November 1989 on the money laundering of drug trafficking proceeds is in principle applicable to Luxembourg UCIs.

When considering the particular way in which the UCI industry is operating, notably in the area of marketing, it appears that it is often extremely difficult for the central administration in Luxembourg to know the identity of investors for whom the subscription and redemption orders are collected by Luxembourg or foreign intermediaries.

Considering the above, certain derogations are permitted for subscription and redemption orders collected by intermediaries established, or whose activities in this respect are exercised in a country which belongs to the Financial Action Task Force on Money Laundering (FATF) established after the Summit of the Arch in June 1989 or which applies the recommendations issued by this Task Force.

The central administration in Luxembourg is not obliged to check the identity of investors, whose orders originate from such intermediaries, given that this control is being performed in the country where these orders are collected. The status of the foreign intermediary must however be verified and unusual transactions must be monitored.

In respect of subscriptions or redemption orders collected by intermediaries established in countries which do not apply the recommendations issued by the FATF, the central administration in Luxembourg is fully responsible for compliance with the rules specified in Circular IML 89/57.

3. Maintenance of the register of unitholders

The requirement for the register of unitholders to be kept in Luxembourg not only implies that such registers must be permanently available there, but also that the central administration in Luxembourg must perform the registrations, alterations or deletions necessary to ensure the regular update thereof.

Where the central administration in Luxembourg uses a remote-access computing network as technical support for the performance of these duties, it may, subject to applying the security and protection measures described under heading 1. above and whilst preserving the confidentiality required by legal and regulatory requirements, use the network to access and store in the processing unit the registration of personal data relating to unitholders. The processing unit therefore has the storage facility required for the maintenance of the register of unitholders.

Distributors who are connected to the remote-access computing network used may, through this network, transmit to the central administration in Luxembourg the information relating to the issue and redemption orders collected by them so that it can trigger the necessary procedures in the network to update the data of the unitholders' register stored in the processing unit.

4. Drawing-up of prospectuses, financial reports and other documents intended for investors.

The requirement for prospectuses, financial reports and other documents intended for investors to be drawn up in cooperation with the central administration in Luxembourg only relates to the intellectual tasks necessary for the drawing-up of these documents as opposed to the physical realisation thereof. For the performance of these tasks, this requirement does not exclude limited recourse to experts, advisers and other specialised providers of services established abroad.

Since technical or purely physical tasks are not addressed by this requirement, the central administration in Luxembourg may use the services of printers or other providers of services established abroad in connection with the physical production of the documents intended for investors.

5. Correspondence and dispatch of prospectuses, financial reports and other documents intended for investors.

The requirement for correspondence and dispatch of prospectuses, financial reports and other documents intended for investors to be made from Luxembourg is intended to safeguard the confidentiality of data relating to investors who directly apply to the central administration in Luxembourg to place their subscription orders or whose names appear in the register of unitholders.

Apart from the case specified below, only the central administration in Luxembourg may, in accordance with this objective, carry out from Luxembourg, the dispatches intended for the investors referred to above even where these dispatches concern documents printed abroad. As an exception to this rule, dispatches to the relevant investors may be carried out from abroad (e.g. from the printer's address) provided such dispatches are made under the supervision of the central administration in Luxembourg. It must then ensure by adequate measures of protection that non-authorised third parties may not access data relating to investors for whom the dispatches are intended.

Chapter E. Rules concerning the depositary of a Luxembourg UCI[1].

I. Conditions of admission to the activity of depositary.

The admission to the activity of depositary of a UCITS subject to Part I of the Law of 30 March 1988 is exclusively limited to banks incorporated under Luxembourg law or Luxembourg branches of banks established in an EEC Member State.

This also applies to the depositary of a UCI subject to Part II of the Law of 30 March 1988, however such a depositary may also be a Luxembourg branch of a bank established in a non-EEC Member State.

Pursuant to Article 71(2) of the Law of 30 March 1988, a UCI may only be authorised if the supervisory authority approves the choice of the depositary. This approval is only given if the proposed depositary can justify that it possesses the necessary infrastructure namely sufficient human and technical resources to perform the totality of the tasks relating to its duties.

II. General mission of the depositary.

Pursuant to the Law of 30 March 1988, the custody of the assets of each Luxembourg UCI must be entrusted to a depositary. This requirement is of general application insofar as it refers to all UCIs irrespective of their status or legal form.

Pursuant to the requirements of the articles of the Law of 30 March 1988, the concept of custody used to describe the general mission of the depositary should be understood not in the sense of "safekeeping", but in the sense of "supervision" which implies that the depositary must have knowledge at any time of how the assets of the UCI have been invested and where and how these assets are available.

In accordance with the meaning thus attributed to the concept of custody, the physical deposit of all or part of the assets may be made either with the depositary itself (which represents the most prudent solution) or with any professional designated by the UCI in agreement with the depositary.

Furthermore, this interpretation of the custody mission of a depositary does not preclude recourse to a fiduciary agreement entered into between the depositary and the UCI for the deposit of the latter's assets; this solution offers some considerable advantages since the depositary disposes of significant authority for the exercise of its duties.

In the context of its supervisory duties of the assets of the UCI, the depositary may communicate with foreign correspondents by using electronic means of communication developed or operated by third parties and possibly by locating computer equipment abroad, provided however that these means are used for the direct communication with the foreign correspondents without the intervention of a third party.

III. Specific duties of the depositary.

1. Specific duties of the depositary of a common fund subject to Part I of the Law of 30 March 1988.

The Law of 30 March 1988 provides that the depositary carries out all operations concerning day-to-day administration of the assets of the common fund.

[1] According to CSSF Circular 16/644 of 11 October 2016, Chapter E no longer applies to UCITS.

This means that the depositary is in particular responsible for the collection of dividends, interest and proceeds of matured securities, for the exercise of options and, in general, for any other operation concerning the day-to-day administration of the securities and liquid assets making up the fund.

To the extent that the operations referred to above involve assets that are not held by the depositary itself, it may entrust the execution thereof to third parties with whom the assets are actually deposited. In such cases and in order to comply with its obligation of supervision of the assets of the common fund, the depositary must organise its relationship with its correspondents so as to ensure that it is immediately informed of any operation executed by them as part of the day-to- day administration of the assets deposited with them.

In addition, the depositary is entrusted with the following supervisory and monitoring duties:

- to ensure that the sale, issue, redemption and cancellation of units executed on behalf of the fund or by the management company are carried out in accordance with the Law and the management regulations;

- to ensure that the value of units is calculated in accordance with the Law and the management regulations;

- to carry out the instructions of the management company, unless they conflict with the Law or the management regulations;

- to ensure that for transactions involving the assets of the fund, the proceeds are remitted to it within the usual time limits;

- to ensure that the income of the fund is allocated in accordance with the management regulations.

In connection herewith, it is not possible for the depositary to delegate to third parties the execution of tasks relating to the obligation "to ensure" the correct performance of the duties referred to above.

However, the term "to ensure" as used in the provisions of the Law of 30 March 1988 implies that the depositary need not "carry out" such tasks itself, but that it must verify the correct execution thereof. Thus for instance, it is conceivable that for objective reasons a depositary might set up a structure in which a foreign company assists in the settlement of portfolio transactions.

Finally, the provision pursuant to which the depositary must carry out the instructions of the management company unless they conflict with the Law or the management regulations, does not prevent the depositary to operate by way of mandate in case the management company entrusts the management of the fund's assets to portfolio managers established abroad.

In such cases, the relationship between the depositary and its representatives must be organised in such a way that the latter have at their disposal all the resources and data necessary to perform the preliminary verifications required for the appraisal of the conformity of a decision taken by the portfolio managers with the requirements of the Law or the management regulations.

Where in the cases referred to above the depositary does not have the possibility to perform these preliminary verifications itself or through its representatives, it must in conjunction with the central administration in Luxembourg, set up supervision procedures capable of ensuring the regularity of the transactions initiated by the portfolio managers with respect to the requirements of the Law or the management regulations.

The possibility for the depositary not to execute itself all duties incumbent upon it and to be assisted by or to delegate to third parties, must not lead to a situation where all duties are concentrated in the hands of one and the same third party. Such a situation would indeed be contrary to relevant legal provisions since its purpose would be to avoid the application thereof. Additionally, it would constitute a structure leading to unnecessary additional costs and could cast doubt on the Luxembourgish nationality of the common fund.

The prohibition of the concentration of duties to be executed by third parties in the hands of the same correspondent of the depositary does not apply to situations where one single correspondent has been chosen for technical reasons. This is *inter alia* the case (without being exhaustive) in situations where investments are made on a single market.

2. Specific obligations of the depositary of a common fund subject to Part II of the Law of 30 March 1988.

The depositary referred to herein has the same duties as the depositary of a common fund subject to Part I of the Law with the exception that it is not obliged to ensure that the calculation of the value of units is carried out in accordance with the Law and the management regulations.

Subject to the conditions specified under the preceding heading 1., it may, to the same extent as a depositary of a common fund subject to Part I, seek assistance from third parties for the execution of its tasks or entrust to its representatives the execution thereof.

3. Specific obligations of the depositary of a SICAV or any other UCI which has not been constituted as a common fund.

For this purpose no distinction is made between the depositary of a UCI subject to Part I and the depositary of a UCI subject to Part II of the Law of 30 March 1988.

In addition to its role of custodian of the assets entrusted to it, the depositary referred to herein must:

- ensure that the sale, issue, redemption and cancellation of units or shares executed by or on behalf of the UCI are carried out in accordance with the Law and the constitutional documents;

- ensure that for transactions involving the assets of the UCI, the proceeds are remitted to it within the usual time limits;

- ensure that the income of the UCI is allocated in accordance with the constitutional documents.

In light of the preceding requirements, it appears that the depositary of a SICAV or of any other UCI which has not been constituted as a common fund does not have supervisory and monitoring duties as extensive as those imposed upon other depositaries by the Law of 30 March 1988.

Thus, the depositary of a SICAV or of any other UCI which has not been constituted as a common fund is not obliged to verify whether the instructions of the management bodies are in accordance with the Law or the constitutional documents.

As for a depositary of a common fund subject to Part II of the Law of 30 March 1988 it is furthermore not obliged to ensure that the calculation of the value of units or shares is carried out in accordance with the Law and the constitutional documents.

Insofar as they refer to obligations which are shared by all depositaries, the provisions under item 1. above apply *mutatis mutandis* to the depositary of a SICAV or of any other UCI which has not been constituted as a common fund.

IV. Liability of the depositary.

As stated above, the concept of custody of UCI assets by the depositary is to be understood in the sense of supervision.

With respect to the full range of duties incumbent upon it under the provisions of the Law of 30 March1988, the depositary has a duty of supervision which implies a liability for its failure to perform its obligations or its wrongful improper performance thereof. Those who have suffered damages must prove the depositary's negligence in respect of its duty of supervision and the link between cause and effect.

This supervision by the depositary is in particular exercised over the third parties with whom the assets of the UCI have been deposited.

As regards the extent of the duty of supervision of the depositary, one can consider that the depositary has discharged its duty of supervision when it is satisfied from the outset and during the whole of the duration of the contract that the third parties with whom the assets of the UCI are on deposit are reputable and competent and have sufficient financial resources.

The duty of supervision of the assets of the UCI and consequently the liability for such supervision always resides with the depositary. Any provision of the management regulations and the articles or any other agreement aiming to exclude or limit this liability are null and void.

It follows from there that the depositary may, in no case, release itself from its duty of supervision. Therefore the depositary may in particular not argue that the deposit of the assets of the UCI has been carried out with its general or specific approval. The liability of the depositary is furthermore unaffected by the fact either that it has been assisted by third parties in the execution of its tasks or that it has entrusted the execution thereof to its agents.

The liability of the depositary in matters of custody is basically different from that in respect of a deposit agreement. Indeed, where the assets of the UCI are on deposit with the depositary itself, its liability is governed by the Law applicable to deposit agreements (Article 1915 and subsequent articles of the Civil Code).

In light of the above, depositary agreements containing liability provisions must distinguish between the following three liability regimes:

- liability of the depositary for the tasks incumbent upon it pursuant to the provisions of the Law of 30 March 1988 where the assets of the UCI are on deposit with third parties;

- liability of the depositary where the assets of the UCI are on deposit with the depositary itself;

- liability of the depositary for the tasks assigned to it by the depositary agreement where such tasks are not expressly referred to in the Law of 30 March 1988.

Chapter F. Rules applicable to UCITS governed by Part I of the Law of 30 March 1988.

I. Intervals at which the issue and redemption prices must be determined.

UCITS must determine the issue and redemption prices of their units or shares at sufficiently close and fixed intervals, being at least twice a month.

II. Redemption by UCITS of their units or shares.

As already mentioned in heading I. of Chapter C. above, UCITS are required to redeem their units or shares directly or indirectly at the request of investors.

In this connection, one has to recall that UCITS must avoid any restrictions whose object is to submit the exercise of the right to redeem to conditions and procedures which would render redemptions practically impossible or needlessly and arbitrarily complicated and less frequent.

It remains however that a UCITS may, subject to adequate justification of the necessity thereof, provide in its constitutional documents that the management bodies may, in particular circumstances (e.g. in the case of temporary liquidity shortage) or where redemption requests received in connection with the same dealing day exceed a certain proportion of the number of securities outstanding, either provide for a delay of settlement of redemptions during a pre-determined period of time, or for a proportional reduction of all redemption requests so that the threshold level is not exceeded. The latter is only permitted however provided that any proportion of a redemption request which is not honoured by virtue of this possibility, is treated as if the request had been made for the next following dealing day or days until full settlement of all of the original redemption requests.

III. Requirements in respect of the composition of assets.

1. Investment in transferable securities.

Subject to the exceptions provided for in Chapter 5 of the Law of 30 March 1988, the investment of the assets of UCITS must be exclusively made in transferable securities which are either admitted to an official stock exchange listing or traded on another regulated market which operates regularly and is recognised and open to the public.

It follows that the authorised investments of UCITS must simultaneously meet the following two essential conditions:

- firstly, they must qualify as transferable securities;
- secondly, these transferable securities must be admitted to an official stock exchange listing or traded on another regulated market which operates regularly and is recognised and open to the public.

Neither the Directive 85/611/EEC, nor the Law of 30 March 1988 provide a definition of the concept of "transferable securities".

A problem may therefore arise where in specific cases involving Luxembourg or foreign securities, it is not clear, *prima facie*, whether the securities qualify as transferable securities.

In the case of Luxembourg securities, the IML will continue to rely on the Luxembourg practice which adopted the interpretation according to which the words "transferable securities" mean quoted securities, that is securities which are capable of being quoted irrespective of whether their admission to an official stock exchange listing has effectively taken place or not. According to this precedent, a quotation is deemed possible where the determination of a single price may be envisaged; this is the case where securities do not significantly differ from one another either by their amount, maturity or in any other material respect.

The above criteria are not applied however for the qualification of foreign securities as transferable securities. In this case, it is the IML policy to align itself with the definition of the relevant securities made by the respective regulations of the countries concerned.

The terms "regulated, operating regularly, recognised and open to the public" as used to designate the definition criteria of the markets referred to above are defined neither by the Directive 85/611/EEC nor by the Law of 30 March 1988.

In the absence of such a definition, the IML considers that the following meaning should be given to these terms:

- regulated: the essential characteristic of a regulated market is the clearing which presupposes the existence of a central market organisation for the execution of orders. Such a market can be further distinguished by its multilateral order matching (general matching of bid and offers enabling the establishment of a single price), transparency (maximum distribution of information amongst buyers and sellers giving them the possibility to follow the evolution of the market so that they may ensure that their orders have been carried out at current conditions) and the neutrality of its organiser (the organiser's role must be limited to recording and supervision);

- recognised: the market must be recognised by a state or by a public authority which has been delegated by that state or by another entity which is recognised by that state or by that public authority, such as a professional association;

- operating regularly: securities admitted to this market must be traded at a certain fixed frequency (no sporadic trading);

- open to the public: the securities traded on this market must be accessible to the public.

2. Debt instruments which are treated as equivalent to transferable securities pursuant to Article 40(2)b) of the Law of 30 March 1988.

   Securities referred to here are regularly traded money market instruments whose residual maturity exceeds 12 months.

3. Investments in liquid assets.

   In addition to the investments authorised pursuant to heading 1. above, a UCITS may hold ancillary liquid assets.

   This term not only covers cash and short-term bank deposits, but also regularly traded money market instruments whose residual maturity does not exceed 12 months.

   The term "ancillary" means in this context that liquid assets may not in themselves constitute an investment objective, the exclusive object of UCITS being the investment of their assets in transferable securities. The Law of 30 March 1988 therefore does not prohibit a UCITS from holding a significant amount of liquid assets during a certain amount of time due to certain circumstances provided that such investment in liquid assets does not become the investment objective of the UCITS.

4. Investments in closed-ended UCIs.

The restrictions imposed by Article 44 of the Law of 30 March 1988 on the purchase of units of open-ended UCIs do not apply to the investment in units of closed-ended UCIs.

The units of closed-ended UCIs are indeed considered as being similar to any other transferable security and are therefore, with respect to investment rules, subject to the general rules applicable to transferable securities.

IV. Borrowings

The restrictions, to which the borrowings of UCITS are subject, do not prohibit a UCITS from acquiring foreign currency by way of a back to back loan. A "back to back" loan refers to the case whereby a UCITS borrows foreign currency in the context of the acquisition and safekeeping of foreign transferable securities and deposits with the lender, its agent or any other person designated by it, an amount in domestic currency equal to or greater than the amount borrowed.

V. Investment limits calculation method as established by Chapter 5 of the Law of 30 March 1988.

The investment limit percentages to be complied with by UCITS must be applied to the net assets of UCITS.

Chapter G. Rules applicable to UCITS subject to Part II of the Law of 30 March 1988.

I. Intervals at which the issue and redemption prices must be determined.

UCITS must determine the issue and redemption prices of their units or shares at sufficiently close and fixed intervals, being at least once a month, subject to the exceptions provided for by the Law of 30 March 1988.

II. Investment limits.

The purpose of the investment limits is to ensure that investments are sufficiently liquid and diversified. It is clear that certain of these limits do not apply to the categories of UCITS defined under heading II.4. of Chapter C. above insofar as they are incompatible with the investment policy defined for each of these categories. Subject to this exception UCITS may not in principle:

a) invest more than 10% of their assets in securities which are not listed on a stock exchange and are not traded on another regulated market which operates regularly and is recognised and open to the public;

b) acquire more than 10% of the same type of securities issued by the same issuing body;

c) invest more than 10% of their net assets in securities issued by the same issuing body.

The aforementioned restrictions are not applicable to securities issued or guaranteed by a Member State of the OECD or their local authorities or public international bodies with community, regional or global scope.

The restrictions mentioned under items a), b) and c) above are applicable to the purchase of units of UCIs of the open-ended type if such UCIs are not subject to risk diversification requirements comparable to those provided for by this circular for UCIs subject to Part II of the Law of 30 March 1988.

It is reminded that units of closed-ended UCIs are treated in the same way as other transferable securities and are therefore subject to the general rules applicable to transferable securities.

The possibility to invest in units of other UCIs must not be used to avoid the provisions of Article 70 of the Law of 30 March 1988.

If it is intended to make investments in other UCIs, the prospectus must expressly state this possibility. Should it be intended to make investments in other UCIs of the same promoter, the prospectus must also specify the nature of the fees and expenses which may arise out of such an investment.

III. Borrowings.

UCITS may borrow the equivalent of up to 25% of their net assets without restriction as to the intended use thereof. This limit does not apply to the category of UCITS defined in heading II.4.3. of Chapter C. above.

IV. Provisions applicable to UCITS which are subject to Chapter 11 of the Law of 30 March 1988.

1. Information to be provided in the constitutional documents. The constitutional documents must *inter alia* specify

   - the principles and methods of valuation of assets;
   - the time allowed for payment in respect of issues (and redemptions, if any);
   - the conditions which permit suspension of issues (and redemptions, if any).

2. Valuation of assets.

   Unless otherwise provided for in the constitutional documents, the valuation of the assets of UCITS referred to herein must be based, in the case of officially listed securities, on the last known stock exchange price, unless such a price is not representative. For securities which are not officially listed and for securities which are listed but for which the latest price is not representative, the valuation shall be based on the probable realisation value which must be estimated with prudence and in good faith.

3. Purchases and sales of securities held in the portfolio.

   The purchase and sale of securities held in the portfolio of the UCITS concerned can only be carried out at prices consistent with the valuation criteria specified in heading 2. above ("Valuation of assets").

Chapter H. Rules applicable to all UCITS.

Pursuant to Article 41 of the Law of 30 March 1988 UCITS are authorised

- to employ techniques and instruments relating to transferable securities provided that such techniques and instruments are used for the purpose of efficient portfolio management;

- to employ techniques and instruments intended to provide protection against exchange rate risks in the context of the management of their assets.

The techniques and instruments which UCITS are authorised to use under this provision are more fully described under headings I. and II. of this Chapter. The use of other techniques and instruments is in principle not permitted.

Where a UCITS wishes to use the techniques and instruments described below, this must be expressly mentioned in its prospectus. In such cases, the prospectus must list the types of transactions envisaged and specify the purpose thereof and the conditions and limits within which such transactions may be made. As the case may be, the prospectus must also include a description of the risks inherent in the transactions envisaged.

I. Techniques and instruments relating to transferable securities.

For the purpose of efficient portfolio management, a UCITS may participate in

- transactions relating to options;

- transactions relating to financial futures and options thereon;

- transactions relating to securities lending;

- repurchase agreements.

1. Transactions relating to options on transferable securities.

The purchase and writing of call and put options by a UCITS is permitted provided that such options are traded on a regulated market which is operating regularly, recognised and open to the public.

When entering into these transactions, the UCITS must comply with the following rules:

1.1. Rules applicable to the purchase of options.

The total premiums paid for the acquisition of call and put options outstanding and referred to herein may not, together with the total of the premiums paid for the purchase of call and put options outstanding and referred to in heading 2.3. below, exceed 15% of the net assets of the UCITS.

1.2. Rules to ensure the coverage of the commitments resulting from option transactions.

Upon the conclusion of contracts whereby call options are written, the UCITS must hold either the underlying securities, or equivalent call options or other instruments capable of ensuring adequate coverage of the commitments resulting from such contracts, such as warrants. The underlying securities related to call options written may not be disposed of as long as these options are in existence unless such options are covered by offsetting options or by other instruments that can be used for that purpose. The same restriction applies to equivalent call options or other instruments which the UCITS must

hold where it does not have the underlying securities at the time of the writing of such options.

As an exception to this rule, a UCITS may write call options on securities it does not hold when entering into the option contract provided that the following conditions are met:

- the aggregate exercise (strike) price of such uncovered call options written shall not exceed 25% of the net assets of the UCITS;

- the UCITS must at any time be able to ensure the coverage of the position taken as a result of the writing of such options.

Where it writes put options, the UCITS must be covered during the entire duration of the option contract by adequate liquid assets which may be used to pay for the securities which could be delivered to it should the put option be exercised by the counterparty.

1.3. Conditions and limits for the writing of call and put options.

The aggregate of the commitments arising from the writing of put and call options (excluding call options written in respect of which the UCITS has adequate coverage) and the aggregate of the commitments from the transactions referred to in heading 2.3. hereafter may not, at any time, exceed the value of the net assets of the UCITS.

In this context, the commitment on call and put options written is deemed to be equal to the aggregate of the exercise (striking) prices of those options.

1.4. Rules concerning regular information intended for the public.

In its financial reports, the UCITS must identify the portfolio securities which are the subject of an option and individually indicate every call option written on securities which are not held in the portfolio. It must also break down by category of options the aggregate of the exercise (strike) prices of options outstanding as at the reference date of the relevant reports.

2. Transactions relating to futures and option contracts on financial instruments.

Except for transactions by private agreement mentioned under heading 2.2. below, the transactions described herein may only relate to contracts that are traded on a regulated market which is operating regularly, recognised and open to the public.

Subject to the conditions specified below, these transactions may be made for hedging or other purposes.

2.1. Transactions whose purpose is to hedge risks associated with the evolution of stock markets.

A UCITS may sell stock index futures to provide general protection against the risk of an unfavourable evolution of the stock markets. For the same purpose, it may also write call options on stock indices or purchase put options thereon.

The hedging purpose of these transactions presupposes that there exists a sufficient correlation between the composition of the index used and the corresponding portfolio.

In principle, the aggregate commitments resulting from futures contracts and stock index options may not exceed the aggregate estimated market value of the securities held by the UCITS in the corresponding market.

2.2. Transactions whose purpose is the hedging of interest rate risk.

A UCITS may sell interest rate futures contracts for the purpose of achieving a global hedge against interest rate fluctuations. It may also for the same purpose write call options or purchase put options on interest rates or enter into Over The Counter (OTC) interest rate swap contracts with highly rated financial institutions specialised in this type of operation.

In principle, the aggregate of the commitments relating to futures contracts, options and swap transactions on interest rates may not exceed the aggregate estimated market value of the assets held by the UCITS which are to be hedged, expressed in the currency corresponding to those contracts.

2.3. Transactions whose purpose is other than hedging.

Besides option contracts on transferable securities and contracts on currencies, a UCITS may, for a purpose other than hedging, purchase and sell futures contracts and options on any kind of financial instruments provided that the aggregate commitments in connection with such purchase and sale transactions together with the amount of the commitments relating to the writing of call and put options on transferable securities does not exceed at any time the value of the net assets of the UCITS.

The call options written on transferable securities for which a UCITS has adequate coverage are excluded from the calculation of the aggregate amount of the commitments referred to above.

In this context, the concept of the commitments relating to transactions other than options on transferable securities is defined as follows:

- the commitment arising from futures contracts is deemed equal to the value of the underlying net positions payable on those contracts which relate to identical financial instruments (after netting all purchase and sale positions), without taking into account the respective maturity dates and

- the commitment deriving from options purchased and written is equal to the aggregate of the exercise (strike) prices including the net sales positions of each underlying asset without taking into account the respective maturity dates.

It is reminded that the aggregate amount of premiums paid for the acquisition of call and put options outstanding which are referred to herein, may not, together with the aggregate of the premiums paid for the acquisition of call and put options on transferable securities mentioned in heading 1.1. above, exceed 15% of the net assets of the UCITS.

2.4. Periodical information intended for the public.

In its financial reports, the UCITS must separately indicate for each of the categories of transactions mentioned in headings 2.1., 2.2. and 2.3. above the total amount of commitments deriving from operations outstanding as at the reference date of the relevant reports.

3. Securities lending transactions.

UCITS may enter into securities lending transactions provided the following rules are complied with:

3.1. Rules intended to ensure the correct execution of lending transactions.

A UCITS may only participate in securities lending transactions within a standardised lending system organised by a recognised securities clearing institution or by a highly rated financial institution specialised in this type of transaction.

In relation to its lending transactions, the UCITS must in principle receive collateral, whose value, at the conclusion of the lending agreement, must be at least equal to the overall value of the securities lent.

This collateral must be given in the form of cash and/or of securities issued or guaranteed by Member States of the OECD or by their local authorities or by supranational institutions and organisations with community, regional or global scope, and blocked in the name of the UCITS until termination of the lending contract.

3.2. Conditions and limits of lending transactions.

Lending transactions may not be carried out on more than 50% of the aggregate market value of the securities in the portfolio. This limit is not applicable where the UCITS has the right, at any time, to terminate the contract and obtain restitution of the securities lent.

Lending transactions may not be extended beyond a period of 30 days.

3.3. Periodical information intended for the public.

The UCITS must indicate in its financial reports the overall valuation of securities lent at the reference date of the relevant reports.

4. Repurchase agreements.

UCITS may enter into a repurchase agreement which consists of the purchase and sale of securities whereby the terms of the agreement entitle the seller to repurchase the securities from the purchaser at a price and at a time agreed to by the two parties at the conclusion of the agreement.

The UCITS may act either as purchaser or seller in repurchase transactions. Its entering into such agreements is however subject to the following rules:

4.1. Rules intended to ensure the correct execution of repurchase agreements.

The UCITS may purchase or sell securities in the context of a repurchase agreement only if its counterparty is a highly rated financial institution specialised in this type of transaction.

4.2. Conditions and limits of repurchase transactions.

During the lifetime of a repurchase agreement, the UCI may not sell the securities which are the object of the agreement either before the repurchase of the securities by the counterparty has been carried out or the repurchase period has expired.

Where the UCITS is open-ended, it must ensure that the sum of all repurchase agreements is limited such that it is able, at all times, to meet its obligations to redeem its own shares.

4.3. Periodical information intended for the public.

In its financial reports, the UCITS must separately indicate for purchases and sales subject to repurchase obligations, the total amount of repurchase agreements outstanding at the reference date of the relevant reports.

II. Techniques and instruments intended to hedge currency risks to which UCITS are exposed within the context of portfolio management.

In order to protect its assets against currency fluctuations, UCITS may enter into transactions the objects of which are currency forward contracts as well as the writing of call options and the purchase of put options on currencies. The transactions referred to herein may only concern contracts which are traded on a regulated market which is operating regularly, recognised and open to the public.

For the same purpose, the UCITS may also enter into forward sales of currencies or exchange currencies on the basis of Over The Counter (OTC) agreements with highly rated financial institutions specialised in this type of transaction.

The hedging objective of the aforementioned transactions presupposes the existence of a direct relationship between such transactions and the assets to be hedged. This implies that transactions made in one currency may in principle not exceed the valuation of the aggregate assets denominated in that currency nor exceed the period during which such assets are held.

In its financial reports, the UCITS must indicate, for the different types of transactions made, the aggregate amount of commitments relating to transactions outstanding as at the reference date of the relevant reports.

Chapter I. Rules applicable to UCIs other than UCITS.

The Law of 30 March 1988 does not provide for the collective investment objective of UCIs other than UCITS which means that such UCIs may carry out investments in assets other than transferable securities.

The detailed provisions which provide investors in traditional UCITS with certain safety guarantees may not be applied entirely as they stand to UCIs whose objective differs from that of UCITS, in particular with respect to the specific nature of the investment policy of the UCIs, which makes it impossible to apply certain operational rules which must be observed by traditional UCITS. UCIs whose objective differs from the objective of traditional UCITS must therefore be submitted to a certain extent to alternative regimes whose rules are differentiated according to the nature of their investments.

To date, the supervisory authority has set up separate rules for three types of specialised UCIs the principal object of which is either:

- the investment in venture capital which refers to the investment in securities of unlisted companies either because these companies have been recently established or because they are still in the course of development and therefore have not yet obtained the stage of maturity required to have access to stock markets; or

- the investment in commodity futures contracts and/or financial futures contracts and/or in options; or

- the investment in real estate.

The separate rules established by the supervisory authority for each of the three specialised types of UCIs do not replace the general rules which remain applicable, rather they only modify certain rules in order to adapt them to the particularities of each type of UCI.

The particular rules applicable to the UCIs referred to here are specified under headings I., II. and III. hereafter.

In specific cases, the IML may grant certain derogations from these rules on the basis of adequate justification.

I. <u>Rules of the particular regime applicable to UCIs whose principal objective is investment in venture capital.</u>

The rules provided for hereafter modify the rules of the general regime with respect to the following points:

1. <u>Management and supervisory bodies.</u>

With regard to the professional qualification, the directors of the management bodies and, where applicable, the investment advisers, must possess a specific experience in the field of investment in venture capital.

2. <u>Investment restrictions.</u>

The investment restrictions applicable to traditional UCITS do not apply to UCIs referred to in this section with the exception that the investment in venture capital must be diversified to such an extent that an adequate spread of the investment risk is ensured. In order to ensure a minimum spread of such risks, the UCIs concerned may not invest more than 20% of their net assets in any one company.

3. Issue and redemption of units or shares.

The date of determination of the issue and redemption prices will depend upon the frequency of the periods of issue and redemption of units or shares.

Where the investors have the right to redeem their units or shares, the UCI may impose certain restrictions on such a right. These restrictions must be clearly described in the prospectus.

4. Special requirements.

Apart from these general rules which are derived from those applicable to traditional UCITS, those UCIs whose principal object is the investment in venture capital must also comply with the following special requirements:

4.1. Type of securities.

The total of bearer and registered shares issued by the UCI must represent a number of shares or units whose value at the time of issue is at least equal to 500,000 francs.

4.2. Remuneration of investment management and advisory bodies.

If the remuneration of the investment management and advisory bodies is higher than that usually received by similar bodies from traditional UCITS, the prospectus must state whether the additional remuneration is also payable on assets which are not invested in venture capital.

4.3. Information for investors.

The annual and semi-annual reports of the UCI must contain information on the development of the companies in which it has invested. In the event of a sale of securities held in the portfolio, the UCI must publish separately for each investment the amount of profit or loss. In addition, the financial statements must mention where there is a potential conflict of interest between the interests of a director of the investment management or advisory bodies and the interests of the UCI.

4.4. Specific information to be disclosed in the prospectus.

The prospectus must contain a detailed description of the investment risks inherent in the investment policy of the UCI and of the nature of the conflicts of interest which could arise between the interests of a director of the investment management and advisory bodies and the interests of the UCI.

Furthermore, the prospectus must include a statement indicating that since an investment in such a UCI represents an above average risk, the UCI in question is only suitable for those persons who are able to assume such risks and that it is advisable for the average subscriber to invest therein only a part of the sum intended for long-term investment.

II. Rules of the particular regime applicable to UCIs whose principal objective is investment in futures contracts (commodity futures and/or financial futures) and/or in options.

The rules provided for hereafter modify the rules of the general regime with respect to the following points:

1. Management and supervisory bodies.

With regard to the professional qualification, the directors of the management bodies and, where applicable, the investment advisers must possess a specific experience in the field of investment in commodities, financial futures and options respectively.

2. Investment restrictions.

2.1. Margin deposits relating to commitments on long or short futures contracts, and call and put options written may not exceed 70% of the net assets of the UCI, the balance of 30% representing a liquidity reserve.

2.2. The UCI may only enter into futures contracts traded on an organised market. Futures contracts underlying options must also comply with this condition.

2.3. The UCI may not enter into commodity contracts other than commodity futures contracts. By way of derogation, the UCI may, with cash settlement, acquire precious metals which are negotiable on an organised market.

2.4. The UCI may only acquire call and put options which are traded on an organised market. Premiums paid for the acquisition of options outstanding are included in the 70% limit provided for under heading 2.1. above.

2.5. The UCI must ensure an adequate spread of investment risks by sufficient diversification.

2.6. The UCI may not hold an open forward position in any one futures contract for which the margin requirement represents 5% or more of net assets. This rule also applies to open positions resulting from options written.

2.7. Premiums paid to acquire options outstanding which have identical characteristics may not exceed 5% of net assets.

2.8. The UCI may not hold an open position in futures contracts concerning a single commodity or a single category of financial futures for which the margin required represents 20% or more of net assets. This rule also applies to open positions resulting from options written.

3. Borrowings.

The UCI may only borrow up to the equivalent of 10% of its net assets provided such borrowings may not be used for investment purposes.

4. Special requirements.

Apart from these general rules which are derived from those applicable to traditional UCITS, those UCIs whose principal object is the investment in futures contracts and/or options must also comply with the following special requirements:

4.1. Type of securities.

The total of bearer and registered shares issued by the UCI must represent a number of shares or units whose value is at least equal to 500,000 francs at the time of issue.

4.2. Remuneration of managers and investment advisers.

If the remuneration of the investment management and advisory bodies is higher than that usually received by similar bodies from traditional UCITS, the prospectus must state whether the additional remuneration is also payable on assets which are not invested in futures contracts and/or options.

4.3. Information for investors.

The annual and semi-annual reports of the UCI must contain information on the amount of profit or loss realised by the UCI, for each category of futures and option contracts that has been carried out. In addition, the financial statements must quantify the commissions paid to brokers and the fees paid to the investment management and advisory bodies.

4.4. Specific information to be disclosed in the prospectus.

The prospectus must contain a detailed description of the trading strategy followed by the UCI with respect to futures contracts and options as well as the investment risks inherent in the investment policy. In particular, mention must be made that the futures and options markets are extremely volatile and that the risk of loss is very high.

In addition, the prospectus must include a statement indicating that the UCI in question is only suitable for persons who are able to assume such risks since the investment in that UCI represents an above average risk.

III. Rules of the particular regime applicable to UCIs whose principal objective is investment in real estate.

By real estate assets this circular refers to:

– property consisting of land and/or buildings registered in the name of the UCI;

– share holdings in real estate companies (including debt securities of such companies) whose exclusive object and purpose is the acquisition, promotion and sale as well as the letting and agricultural lease of property, provided that these share holdings must be at least as liquid as the property rights held directly by the UCI; - property related long-term interests such as surface ownership, lease-holds and option rights on real estate assets.

The rules provided for hereafter modify the rules of the general regime with respect to the following points:

1. Management bodies.

With regard to the professional qualification, the directors of the management bodies and, where applicable, the investment advisers, must possess a specific experience in real estate assets.

2. Investment restrictions.

The investment restrictions applicable to traditional UCITS do not apply to UCIs referred to in this section. Nevertheless, the investment in real estate assets must be diversified to such an extent that an adequate spread of the investment risk is ensured. In order to achieve a minimum spread of such risks, the UCIs concerned may not invest more than 20% of their net assets in a single property, such a restriction being effective at the date of acquisition of the relevant property. Property whose economic viability is linked to another property is not considered a separate item of property for the purpose of this restriction.

This 20% rule does not apply during a start-up period which may not extend beyond four years after the closing date of the initial subscription period.

3. Issue and redemption of securities.

The net asset value on which the issue and redemption prices of the securities are based must be determined at least once a year, namely at the end of the financial year, as well as on each day on which shares or units are issued or redeemed. In respect of real estate assets, management may use the valuation established at the yearend throughout the following year unless there is a change in the general economic situation or in the condition of the properties which requires new valuations to be carried out under the same methods as those used for the annual valuation.

Where the investors have the right to redeem their units or shares, the UCI may impose certain restrictions thereon. In addition, where it is justified, notably with regard to a specific investment policy, the UCI has the obligation to restrict such a right of redemption. These restrictions must be clearly described in the prospectus. The UCI may in particular provide for deferred settlements for cases when it does not hold sufficient liquid assets to immediately honour the redemption requests received.

4. Special requirements.

Apart from these general rules which are derived from those applicable to traditional UCITS, UCIs whose principal object is the investment in real estate must also comply with the following special requirements:

4.1. Remuneration of investment management and advisory bodies.

If the remuneration of the investment management and advisory bodies is higher than that usually received by similar bodies from traditional UCITS, the prospectus must indicate whether such additional remuneration is also payable on assets which are not directly or indirectly invested in real estate assets.

4.2. Valuation of properties.

Management must appoint one or more independent property valuers with a specific experience in the field of property valuation.

At the end of the financial year, management must instruct the property valuer(s) to examine the valuation of all properties owned by the UCI or by its affiliated real estate companies.

In addition, properties may not be acquired or sold unless they have been valued by the property valuer(s), although a new valuation is unnecessary if the sale of the property takes place within six months after the last valuation thereof.

Acquisition prices may not be noticeably higher, nor sales prices noticeably lower, than the relevant valuation except in exceptional circumstances which are duly justified. In such cases, the managers must justify their decision in the next financial report.

4.3. Borrowings.

The aggregate of all borrowings of the UCI may not exceed on average 50% of the valuation of all its properties.

4.4. Financial statements.

The audit of the accounts of the UCI and of real estate companies which are more than 50% funded by the UCI either by way of equity or loans, must be carried out under the responsibility of one and the same *réviseur d'entreprises* (statutory auditor). The accounts of these entities must in principle be drawn up as per the same date.

At the end of each half year, the accounts of the UCI must be consolidated with those of the real estate companies referred to in the preceding paragraph subject to the relevant legal requirements.

Where the UCI holds minority interests in real estate companies whose securities are not listed on a stock exchange nor traded on another regulated market operating regularly, recognised and open to the public, the UCI must provide either for a partial consolidation at year end or for a valuation on the basis of the probable sale value estimated with prudence and in good faith by its management. For the valuation of minority shareholdings held in real estate companies whose securities are listed on a stock exchange or traded on another regulated market operating regularly, recognised and open to the public, the stock exchange or market value must be taken into consideration.

In its annual and semi-annual reports, the UCI must clearly explain the accounting principles applied for the consolidation of its own accounts with those of affiliated real estate companies.

The inventory of properties included in the annual and semi-annual reports must, for each category of property held by the UCI or its real estate companies, indicate the overall purchase or cost price, the insured value and the market value.

In the financial statements, properties must be shown at market value.

4.5. Specific information to be disclosed in the prospectus.

The prospectus must give a description of the investment risks inherent in the UCI's investment policy. In addition, the prospectus must provide details of the nature of the commissions, expenses and charges to be borne by the UCI and the methods used for their calculation and allocation.

Chapter J. Rules applicable to UCIs with multiple compartments.

I. General principle.

The Law of 30 March 1988 introduced into Luxembourg law the concept of UCIs with multiple compartments, commonly referred to as "umbrella funds".

These are UCIs set up as common funds or investment companies with several compartments within a single entity. These compartments are used for instance to invest in transferable securities denominated in different currencies or of different geographic regions or economic sectors. From a practical point of view, it proved to be useful to offer investors the possibility within a single entity to choose between several currencies or assets. Furthermore, after having invested in one compartment, the investor may easily switch to one or several other compartments. The conversion from one compartment to the other within the same UCI in principle does not incur the higher rates of commission associated with the case whereby the investor invests in legally separate and independent undertakings.

The Law of 30 March 1988 provides that a multiple compartment UCI constitutes a single legal entity. This implies that a multiple compartment UCI, where certain compartments would normally fall under Part I of the Law of 30 March 1988 whilst other compartments would fall under Part II, is to be considered to fall in its entirety under Part II because of the criterion of the "single legal entity".

Nevertheless, the Law of 30 March 1988 provides that the constitutional documents of multiple compartment UCIs may provide that in respect of the relations between unitholders, each compartment will be treated as a separate entity.

Considering that the multiple compartment UCI, existing as a single legal entity, consists of different compartments and that the investor may restrict his investment to one or the other compartment, it appears inevitable that the units or shares of this single legal entity can have different values. For this reason, the Law of 30 March 1988 provides in its Article 111 that the units and shares may be of different values with or without mention of value, depending on the legal form which has been chosen. This is a derogation clause relating to Article 37 of the Law of 10 August 1915 on commercial companies (as amended) which, in particular, provides that the capital of limited liability companies is divided into shares of equal value.

The experience obtained of multiple compartment UCIs has lead to the drawing- up of the rules set out under headings II., III. and IV. hereafter.

II. Common funds.

In order to remain within the scope of Article 111(2) of the Law of 30 March 1988 which provides that multiple compartment UCIs constitute a single legal entity, the following conditions must be met:

- the different compartments of the fund must have a common generic denomination and a single management company which determines the investment policies and their application to the relevant compartments through a single board of directors of the management company;

- the custody of the assets of the different compartments of the fund must be ensured by a single depositary who may however use, to the same extent as those funds with a single portfolio, correspondents in different geographic regions;

- the fund must be governed by a single set of management regulations which form its legal basis. Subject to derogations which may be granted by the IML on the basis of adequate justification, the management regulations must notably determine for each compartment the same redemption conditions for each category of units and the same general valuation, suspension, redemption and investment restriction principles;

- the supervision of the fund must be carried out by a single *réviseur d'entreprises* (statutory auditor);

- the unitholders shall in principle, subject to reasonable limits, be able to switch from one compartment to the other without payment of commissions;

- the management regulations must indicate the currency in which the combined position of the fund is expressed and which is obtained by aggregating the financial positions of all the compartments in the fund.

In addition to the preceding more specific conditions, common funds with multiple compartments must also comply with the following conditions:

- the certificates or other documents evidencing the rights of unitholders may only differ with regard to the designation of the respective compartments for which they are issued;

- the issue and redemption of units attributable to each compartment must be carried out at a price arrived at by dividing the net asset value of the corresponding compartment by the number of outstanding units in that compartment;

- the investment and borrowing restrictions provided for by the Law of 30 March 1988 or by this circular must be complied with inside each compartment with the exception of those restricting the holding of securities of a single issuer which shall also apply to the aggregate of all of the different compartments.

As regards more particularly the condition of minimum net assets resulting from Article 22 of the Law of 30 March 1988, it is considered that this condition is complied with if a common fund with multiple compartments reaches minimum assets of 50 million francs in respect of the aggregate of all its compartments within a period of 6 months following its authorisation.

As a consequence of the above, the provisions of the first paragraph of Article 23 of the Law of 30 March 1988 only become applicable after the aggregate net assets of all the compartments of a multiple compartment common fund taken together have fallen below two thirds of the legal minimum of 50 million francs.

III. Investment companies.

The specific characteristics associated with the concept of multiple compartment investment companies call for the following observations:

1. In a multiple compartment investment company the net asset value of a share is calculated on the basis of the net assets of the compartment in respect of which the share is issued. The value of shares of the same company shall therefore necessarily differ from one compartment to the other.

   However, this difference in share value representing the share capital of a multiple compartment investment company has no impact on the voting rights attached to such shares. Indeed, each share gives the right to one vote within the context of the exercise of voting rights and all shares participate equally in the decisions to be taken in general meetings.

   For the sake of clarity, it is recommended that this equal treatment of shareholders in respect of the exercise of their voting rights is emphasised in the articles of incorporation of a multiple compartment investment company.

Furthermore, the articles should in addition distinguish between the decisions affecting all shareholders and which are to be considered in a single general meeting and the decisions only affecting the specific rights of shareholders of one compartment and which are therefore taken by the general meeting of one compartment.

2. Every company must have a share capital represented by shares.

The Law implies that there be

- a single share capital;
- denominated in a single currency;
- the nominal or accounting par value being expressed in that same currency;
- the annual accounts also being expressed in that same currency.

It follows from there that the share capital of a multiple compartment investment company must be denominated in a single reference currency. However, the net asset value of each compartment is denominated in the currency of the relevant compartment.

In the interests of a clear understanding of the operating mechanism of multiple compartment investment companies, it is recommended that the articles of these companies clearly indicate the preceding particularities.

3. The articles of a multiple compartment investment company, similarly to the articles of investment companies with a single portfolio, must indicate the circumstances of suspension of the calculation of the net asset value of the company and consequently the suspension of issues and redemptions of shares of that company.

The articles of a multiple compartment investment company must furthermore provide for the circumstances of suspension of the calculation of the net asset value (and consequently of issues and redemptions) of the individual compartments.

4. The investment and borrowing restrictions provided for by the Law of 30 March 1988 or by this circular must be complied with inside each compartment with the exception of those restricting the holding of securities of a single issuer which shall also apply to the aggregate of the different compartments.

IV. Common rules applicable to all UCIs with multiple compartments.

It must be clearly stated in the constitutional documents of multiple compartment UCIs irrespective of whether they are established in the form of common funds or in the form of investment companies, that for the purposes of the relations between unit- or shareholders, each compartment shall be treated as a single entity with its own funding, capital gains and losses, expenses etc...

The launch of a new compartment is subject to the authorisation of the IML and the update of the prospectus, where necessary, by means of an insert.

Chapter K. Contents of the file which must accompany the application for authorisation of UCIs.

In support of their application for entry on the list provided for by Article 72(1) of the Law of 30 March 1988, Luxembourg UCIs must submit to the IML an application file which, *inter alia*, contains the following:

a) Drafts of

- the constitutional documents (articles of incorporation of the management company and management regulations or articles of incorporation of the UCI),
- the prospectus and all other information and/or marketing material intended for investors,
- any agreements such as depositary and advisory agreements;

b) Indication of the name of the depositary in Luxembourg with a precise and detailed description of the human and technical resources at its disposal for the accomplishment of all the tasks related to its duties;

c) Indication of the name of the *réviseur d'entreprises* (statutory auditor);

d) Information on the organisation of the central administration of the UCI in Luxembourg with a precise and detailed description of the human and technical resources at its disposal for the accomplishment of all the tasks linked to its duties;

e) Information on the promoter(s) such as recent financial reports;

f) Biographical notices of administrators and managers;

g) Information on the method used to market the securities issued by the UCI, the countries of distribution and the targeted investors.

Where the information and documents mentioned in the preceding items b), d), e) and f) have already been submitted to the IML in respect of a previous application they must not be resubmitted provided that no change has occurred in the interim.

Chapter L. Information and marketing material intended for investors.

I. Prospectus.

1. Contents of the prospectus.

The prospectus must include the information necessary for investors to be able to make an informed judgment on the investment proposed to them.

It shall contain the information provided for in Schedule A annexed to the Law of 30 March 1988 insofar as such information does not already appear in the documents annexed to the prospectus in accordance with Article 87(1) of the same Law. In addition, it must carry a statement that no person is authorised to give any information other than that contained in the prospectus or in the documents referred to therein and which may be consulted by the public.

The IML may require the publication of all additional information it deems necessary in order to provide objective and complete information to the public.

Every prospectus must be dated and may be used only as long as the information contained therein remains accurate. The essential elements of the prospectus must be kept up to date. This could be achieved by inclusion in the periodical financial reports.

UCIs may in principle only enter into the transactions specifically mentioned in their prospectus. This particularly applies to the transactions concerned by Chapter H. above. Reference is made to the detailed provisions of that Chapter.

2. Specific rules applicable to multiple compartment UCIs.

In the interests of providing correct information to investors, it is recommended that the rules set out under headings II. to IV. of Chapter J. above should be stated clearly not only in the constitutional documents of multiple compartment UCIs, but also in the prospectuses of such UCIs.

Multiple compartment UCIs must provide for a single prospectus covering all of their compartments. In this prospectus, it must be specified that commitments in relation to a single compartment bind the whole of the UCI unless contrary arrangements have been agreed with the relevant creditors.

Besides this prospectus, multiple compartment UCIs may provide for the publication of separate prospectuses for each of their compartments. Where this facility is used, it is mandatory that the following information, clearly indicated, be included in the separate prospectuses:

- Indication that the compartment concerned, to which the separate prospectus relates, does not constitute a separate legal entity, rather that there exists other compartments which together with the compartment in question form a single entity;

- Indication that for the purposes of the relationship between unit- or shareholders, each compartment is considered a separate entity with its own funding, capital gains and losses, expenses etc.;

- Indication that commitments in respect of the compartment to which the separate prospectus relates, bind the whole UCI unless contrary arrangements have been agreed to with the relevant creditors;

- Indication that there exists a prospectus which includes a complete description of all the compartments of the UCI with an indication as to where that prospectus may be obtained.

3. Visa.

In order to ensure the correct identification of the prospectuses which have obtained the "*nihil obstat*" of the IML, such prospectuses are visa stamped by the IML and returned complete with visa to the person who submitted the file.

For this purpose, the IML must receive five copies of each prospectus when final with respect to both content and presentation. The visa stamp may in no circumstances be used for publicity purposes.

II. […][2]

III. Financial reports.

1. Periodicity and content of financial reports.

Every UCI must publish an annual report for each financial year and a semi-annual report covering the first six months of the financial year.

The financial year ends in principle on the last calendar day of a month.

The annual and semi-annual reports must be published within the following time limits with effect from the end of the period to which they relate:

- four months in the case of the annual report;
- two months in the case of the semi-annual report.

In respect of the content of the financial reports, reference is made to Article 86(2), (3) and (4) of the Law of 30 March 1988 as well as to Schedule B annexed to that Law. In the same context, it is reminded that the financial reports must include the information required by the provisions of Chapter H. above in respect of the transactions referred to in that Chapter.

The *réviseur d'entreprises'* (statutory auditor's) report provided for by Article 89(1) of the Law of 30 March 1988 must be included in the annual reports.

2. Specific rules applicable to multiple compartment UCIs.

Multiple compartment UCIs must include in their financial reports separate information on each of their compartments as well as aggregate information on all of their compartments. The information referred to hereby is provided for by Article 86(2), (3) and (4) of the Law of 30 March 1988 as well as in Schedule B annexed to that Law, provided that headings II., III., IV., VI. and VII. of that Schedule are not to be considered for the compilation of aggregate information.

The separate financial reports, which must be established for each of the compartments, must be expressed in their respective reference currency. For the purpose of the establishment of the aggregate situation of the UCI, these financial reports must be added together following conversion into the denomination of the share capital, where the UCI has been formed as an investment company, or into the currency determined for that purpose by the management company, where the UCI has been formed as a common fund.

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[2] Repealed by CSSF Circular 05/177.

Alongside the full report to be established pursuant to these rules, multiple compartment UCIs may provide for the publication of separate financial reports for each of their compartments. Where this facility is used, the conditions to be respected for the publication of separate prospectuses are applicable by analogy to this case. Reference is made in this connection to heading I.2. above.

Where a separate annual report is established for each compartment of a multiple compartment UCI, the réviseur *d'entreprises'* (statutory auditor's) report provided for by Article 89(1) of the Law of 30 March 1988 must also be included in the relevant report unless the *réviseur d'entreprises* (statutory auditor) establishes separate reports for each compartment. If separate *réviseur d'entreprises'* (statutory auditor's) reports are established, they may be published in the separate annual reports of the relevant compartments in lieu of the report covering all the compartments which make up the UCI.

3. Publication of the financial reports and communication thereof to the IML.

The UCI must transmit to the IML two copies of its annual and semi-annual reports when final with respect to both contents and presentation, no later than at the moment of publication. It is not necessary to submit drafts to the IML prior to publication.

Financial reports are not subject to the visa formality.

Where periodical reports contain errors or omissions, the IML reserves the right to determine if an amended report must be published.

IV. Use of the prospectus and periodical reports.

Pursuant to the provisions of Article 91(1) of the Law of 30 March 1988 the prospectus and the latest annual report as well as the subsequent semi-annual report, if published, must be offered to subscribers free of charge before the conclusion of a subscription contract.

In this respect, the question arises whether, before the conclusion of a subscription contract, the above-mentioned documents must be provided to the subscriber upon his request only or whether they must be provided in any event even in the absence of such a request.

On this matter, the IML considers that the subscription contract may be entered into without the subscriber being aware of or, even received, a copy of the prospectus and periodical reports, provided these documents had been offered to him in the conditions provided for.

It follows from the above that Article 91(1) of the Law of 30 March 1988 does not prohibit that the subscription form is attached not to the prospectus, but to a brief information brochure which indicates how subscribers may obtain the prospectus and the periodical reports.

It is clear that for the purposes of distributing their securities abroad, Luxembourg UCIs must comply with the legal, regulatory and administrative provisions which govern the use of the prospectus and periodical reports in the respective distribution countries.

Chapter M. Financial information intended for the IML

In accordance with Article 94(1) of the Law of 30 March 1988, the UCIs must transmit to the IML the financial information set out in the table (IML: "Monthly financial information of UCIs") a template of which is annexed to this circular, on a monthly basis.

I. Reference date.

In principle, the last day of every month shall be the reference date for the preparation of financial information to be transmitted to the IML.

However, the preceding rule is not compulsory for UCIs which calculate their net asset value at least once a week. For this category of UCIs, the reference date may be the last day on which the net asset value of that month is calculated.

This derogation is also valid for the UCIs which calculate the net asset value per unit or per share at least monthly if the day of this calculation falls either in the last week of the reference month or in the first week of the following month. The financial information to be transmitted to the IML must then be prepared on the basis of the data available at the calculation date nearest to the last day of the month.

UCIs which do not calculate their net asset value per unit or per share on a monthly basis need only indicate in their monthly statements the amounts effectively booked in the accounts at the end of the month excluding any non- accounting estimates.

II. Reporting deadlines.

UCIs must report the monthly information to the IML within a period of 20 days after the reference date.

III. Reporting currency and portfolio.

The table for the transmission of monthly financial information must indicate the reporting currency used for the preparation of the information set out in point I.1., I.2. and III. of the table concerned. This reporting currency must be the currency used to calculate the net asset value per unit or share of a UCI.

The term "portfolio" within the meaning of point II. of the same table means all the investments which constitute the object of the investment policy of a UCI.

IV. Change in the net asset value per unit or per share.

Where the net asset value per unit or per share varies over 10% compared to the value calculated at the end of the preceding month, explanations must be given as to the reasons for this variation.

V. UCIs with multiple compartments.

The monthly financial statements must be drawn up for each compartment separately by using the reporting currency of the compartment concerned and a global situation must be drawn up in the currency used for the overall financial statements of the UCI.

Chapter N. Rules applicable to management companies of common funds.

I. Information obligation of management companies vis-à-vis the IML.

Immediately following the approval thereof by the general meeting of shareholders, the management companies of common funds must transmit to the IML their annual accounts together with the directors' report and the report of the external auditors responsible for the audit of the annual accounts.

II. Authorisation of the shareholders of a management company.

Pursuant to Article 71(3) of the Law of 30 March 1988 the managers of a management company must be of sufficiently good repute and have the requisite experience for the performance of their duties.

To that end, the names of the managers of the management company, and of every person succeeding them in office, must be communicated forthwith to the supervisory authority.

The Law of 30 March 1988 defines managers as being the persons who represent the management company or who effectively determine the strategy thereof.

This raises the question as to whether the shareholders of the management company are to be considered as managers for whom authorisation by the supervisory authority is required. This question must be answered in the affirmative insofar as one has to consider that the shareholders effectively determine the strategy of the management company.

The principal shareholders of the management company of a common fund must therefore be of sufficient repute and have the requisite experience for the performance of their duties and must, in this respect, obtain the authorisation of the IML.

Chapter O. Distribution rules applicable in Luxembourg.

The marketing rules with which UCIs must comply in Luxembourg when their units or shares are distributed therein derive in particular from:

- the Law of 25 August 1983 on the legal protection of consumers;
- the Law of 27 November 1986 regulating certain commercial practices and penalising unfair competition; and
- the Law of 16 July 1987 on door-to-door sales, itinerant trade, display of goods and canvassing for orders.

Chapter P. Obligation of UCIs to inform the IML of the audit performed by the *réviseur d'entreprises* (statutory auditor).

UCIs must forthwith communicate to the IML without being specifically requested to do so, the declarations, reports and written observations made by the *réviseur d'entreprises* (statutory auditor) within the scope of the controls which he must carry out pursuant to Article 89 of the Law of 30 March 1988. The documents to be communicated must *inter alia* include the written observations issued by the *réviseur* (auditor) which generally take the form of a management letter addressed to the UCI.

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