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Client alert
24 October 2020
InsightPlus



Investment Funds Legal Update

Our Luxembourg Investment Funds Team has undertaken a summary of the latest important legal and regulatory round-up in AML/KYC and investment funds areas.

If you have any questions about the matters discussed below, please contact our experts by clicking on the email links in the **contact us** section.

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1. AML/KYC update

a) Implementation of certain provisions of Directive (EU) 2018/843 into Luxembourg law

On 25 March 2020, two new laws were published in the Luxembourg official gazette regarding the implementation of certain provisions of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 ("**5th AML Directive**") into Luxembourg law:

- **the law of 25 March 2020** amending, among other things, the law of 12 November 2004 on the fight against money laundering and terrorist financing ("2004 Law") in view of implementing certain provisions of the 5th AML Directive of the European Parliament and of the Council of 30 May 2018 into national legislation
- **the law of 25 March 2020** establishing a central electronic data retrieval system related to payment accounts and bank accounts identified by IBAN and safe-deposit boxes held by credit institutions in Luxembourg

Pursuant to the entry into force of these laws, the *Commission de Surveillance du Secteur Financier* (CSSF) issued the following:

- **Circular 20/742 of 4 May 2020** was issued drawing the attention of financial sector professionals to the major changes introduced by the two above-mentioned laws dated 25 March 2020 to the anti-money laundering/combating the financing of terrorism (AML/CFT) regime applicable to the Luxembourg financial sector, as provided for in the 2004 Law.
- **A communiqué of 9 April 2020** was issued regarding the new professional obligations of virtual asset service providers and the related registration process.
- **Circular 20/747 of 23 July 2020** was issued (updated on 7 September 2020 (Annex 1: description of the technical modalities that the professionals are required to strictly follow) and on 9 October 2020 (Annex 2: description of the structure of the data file to be submitted by the professionals to the CSSF)) concerning technical rules relating to the application of the law of 25 March 2020 establishing a central electronic system retrieval system. It provides clarifications about the technical and IT aspects of the central electronic data retrieval system, which is based on creating and making a file available to the CSSF by each of the professionals with regard to payment account, bank accounts and safe deposit boxes.
- **A Q&A related to CSSF Circular 20/747** was issued.

b) New Luxembourg register for fiducies and trusts

On 14 July 2020, **a new law setting up a Luxembourg register of fiducies** (fiduciary arrangements) and trusts ("**Register of Trusts**") under the supervision of the *Administration de l'Enregistrement, des Domaines et de la TVA* (AED) was published in the Luxembourg official gazette ("**RFT Law**") and it entered into force on 17 July 2020.

The RFT Law fully implements Article 31 of Directive (EU) 2015/849 of the European Parliament and of the Council of 25 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("**4th AML Directive**"), as amended by the 5th AML Directive with respect to the obligations of the covered entities to obtain and hold certain information, in particular, on their ultimate beneficial owners (UBOs) at their registered office and the registration obligation for trusts and fiducies.

- (i) **Scope of the registration obligation for trusts and fiducies**

The RFT Law applies to any fiducie and any express trust as defined by the RFT Law with a fiduciary agent or a trustee established or residing in Luxembourg. Legal arrangements that have a structure or functions similar to that of fiduciary arrangements and trusts defined by law are also included.

When fiduciary agents or trustees are established or are resident in different member states, fiduciary agents or trustees established or resident in Luxembourg may provide the AED with an attestation providing proof of registration or an extract from the information on the beneficial owners stored in an EU register.

It also applies to any express trust or fiducie for which the fiduciary agents or trustees are established outside the European Economic Area to the extent that the fiduciary or the trustee, in the name of the fiducie or the trust, establishes a business relationship with a professional within the meaning of the 2004 Law or acquires a property that is located in Luxembourg.

When the fiduciaries or trustees form multiple business relationships on behalf of the trust in different member states, the fiduciary or trustee established or residing in Luxembourg must submit a certificate to the AED, a registration certificate or an extract of the details on the UBOs as recorded in a register kept by a member state.

(ii) Information to be filed with the Register of Trusts

The following information ("**Relevant Information**") will be electronically filed with the Register of Trusts for each entity

- register's number
- name of the entity
- date of the formation of the entity
- certain identification information (listed in the RFT Law) regarding each UBO (individuals or companies)
- whether the entity holds or owns a controlling interest in any corporate or other legal entity other than those referred to in Article 30 (1) of the 4th AML Directive, through direct or indirect ownership, including through bearer shareholdings or through control via other means

(iii) Meaning of "beneficial owner"

The RFT Law refers to the definition of a UBO provided for by Article 1(7) of the 2004 Law.

The following persons will be considered to be the UBO of fiducies and trusts:

- the settlor(s)
- the fiduciary agent(s) or trustee(s)
- the protectors
- if any, the beneficiaries or, where the individuals who will benefit from the legal arrangement or entity have yet to determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates
- any other natural person exercising ultimate control over the fiducie or trust by means of direct or indirect ownership or by other means

(iv) Access to the Register of Trusts

The Register of Trusts will be made electronically available to:

- national authorities, self-regulatory bodies within the context of their supervisory mission with respect to AML/CFT and professionals listed in Article 2 of the AML Law ("Professionals") (e.g., credit institutions, investment firms, insurance or reinsurance companies) within the context of their customer due diligence measures
- any person demonstrating a legitimate interest as part of the AML/CFT framework upon a duly

motivated request addressed to the AED with supporting documentation (limited access)

Information filed with the Register of Trusts is submitted, updated and removed online through [MyGuichet.lu](#).

In exceptional circumstances, a UBO may request that access to the information filed with the RFT be limited for a maximum period of three years (possibly renewed upon a duly justified request). This may apply if the UBO is exposed to a disproportionate risk, a risk of fraud, kidnapping, blackmail, violence, intimidation or where the UBO is either a minor or legally incapable. In such a case, the access to the Relevant Information will be limited to the national authorities, credit and financial institutions, public notaries and bailiffs.

(v) Obligations for trustees, fiduciary agents and the UBO

The fiduciary agent and trustee (and any persons holding an equivalent position in legal arrangements that have a structure or functions that are similar to those of a fiducie or trust) will:

- obtain and hold at the registered place of administration of the express trust administrated in Luxembourg or the fiducie for which the trustees or fiduciary agents act in such capacities, adequate, accurate and up-to-date information on the identity of all persons identified as UBOs, and basic information on any Professionals and foreign law entities, that if their registered office had been located in the Grand Duchy of Luxembourg, would have been considered as a Professional entering into a business relationship or providing services to the fiducie or trust
- keep these information for a period of five years following the termination of their involvement in the relevant fiducie or trust
- under certain conditions, provide the above-mentioned information and other information listed in the RFT Law (registration number in the Luxembourg or foreign register of fiducies) to the national authorities (e.g., state prosecutor, the CSSF, tax authorities, etc.), self-regulating bodies (e.g., bar association, auditors' association, etc.) and Professionals (with whom the fiduciary agent and the trustee enter into a business relationship or carry out an occasional transaction exceeding one of the relevant thresholds of the 2004 Law)
- register (i) certain listed information relating to fiducies and express trusts (or assimilated legal arrangements), and (ii) UBO information with the Register of Trusts and any subsequent amendment thereof within a month of the event requiring the registration or modification of the information

Each UBO of the registered entities and professionals will provide the registered entity with all of the information required by the RFT Law so that the latter may comply with its obligations thereunder.

(vi) Sanctions in the case of an infringement of the RFT Law

For the fiduciary agent and trustees: administrative sanctions, including administrative fines of up to twice the amount of the benefit derived from the infringement where such amount can be determined or of up to a maximum of EUR 1.25 million.

c) The CSSF issued new AML/CFT circulars that provide new indicators to predicate tax offenses

On 3 July 2020, the CSSF issued [Circular 20/744](#) complementing Circular 17/650 of 17 February 2017, which provides for guidance on the extension of the offense of money laundering to aggravated tax fraud (*fraude fiscale aggravée*) and tax evasion (*escroquerie fiscale*) and on applicable AML/CFT professional obligations.

The amendments concern only Annex 1 of Circular CSSF 17/650 and provide for new indicators to be taken into account in the context of collective investment activities (under a newly added title II).

The CSSF reminds professionals under its AML/CFT supervision to take these new indicators, where relevant, into account in their risk assessments and when designing risk mitigation measures proportionate to their risk exposure within the specific context of collective investment activities.

On 14 September 2020, the CSSF published [Circular 17/650 coordinated with Circular 20/744](#) in relation to the application of the 2004 Law and the Grand Ducal Regulation of 1 February 2010 providing details on certain provisions of the AML/CFT Law to predicate tax offences.

d) Circular CSSF 20/746 FATF statements

On 9 July 2020, the CSSF issued [Circular 20/746](#) relating to recent declarations from the Financial Action Task Force (FATF) and providing recommendations for all supervised entities regarding the Democratic People's Republic of Korea, Iran and Albania, the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Myanmar, Nicaragua, Pakistan, Panama, Syria, Uganda, Yemen and Zimbabwe.

e) The CSSF — money laundering and financing of terrorism sub-sector risk assessment

On 20 July 2020, the CSSF published [its money laundering and financing of terrorism sub-sector risk assessment](#) for professionals performing trust and company service provider (TCSP) activities.

This first TCSP sub-sector risk assessment focuses on CSSF-supervised "specialized professionals of the financial sector" providing corporate services. According to the CSSF, this risk assessment is a valuable tool for all stakeholders to better understand the money laundering and terrorist financing risks associated with TCSP activities and the measures necessary to combat them.

Supervised professionals are invited to strengthen their understanding of money laundering and terrorist financing threats and vulnerabilities and the development of proportionate and effective controls. The assessment details observed best practices, common findings from supervision and targeted recommendations the private sector should adopt.

The CSSF will monitor professionals' adherence to these recommendations as part of its supervisory activities.

f) Two new AML/CFT regulations published

On 20 August 2020, two new regulations were published in the Luxembourg official gazette:

- [CSSF Regulation 20-05 of 14 August 2020](#) modifying Regulation 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing
- [Grand Ducal Regulation of 14 August 2020](#) modifying Grand Ducal Regulation of 1 February 2010 providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing

The CSSF regulation has been amended to take into account the recent changes of the legislation on AML/CFT, in particular, due to the implementation of certain provisions of the 5th AML Directive into Luxembourg law by the law dated 25 March 2020.

The amended version of the CSSF regulation contains, among other things, important clarifications regarding the AML/CFT risk assessment methodology and risk appetite; the timeline to perform the review of KYC information collected; the AML/CFT procedures applicable to investments; the recourse to third parties and liability; the review, assessment and approval of the AML/CFT policy and procedures; the supervision of business relationships in high-risk countries; the definition of the duties of the person responsible for compliance with the AML/CFT obligations (RR) and the person responsible for the control of compliance (RC); and the reporting obligations toward the Financial Intelligence Unit and the CSSF

2. Investment funds update

a) New weekly questionnaire to investment fund managers

On 9 April 2020, the CSSF issued [a press release](#) regarding the launch of a weekly questionnaire to investment fund managers (IFMs).

The objective of this questionnaire is to provide the CSSF with weekly updates on financial data (total net assets, subscriptions and redemptions) and an update on governance arrangements in relation to the activities performed by IFMs established in Luxembourg or in other European/non-European countries, and managing at least one undertaking for collective investment in transferable securities (UCITS), alternative investment fund (AIF) and/or any other undertaking for collective investment (UCI) (not qualifying as an AIF) in view of the specific circumstances and risks to which these companies are exposed during the current period of market turbulence.

b) IFM notification on fund issues and large redemptions

On 13 May 2020, the CSSF launched **an IFM notification** on fund issues and redemptions.

In its press release, the CSSF indicated that: (i) all IFMs concerned by the notification on fund issues and/or large redemptions have been contacted by the CSSF; and (ii) an IFM notification has to be transmitted to the CSSF via eDesk only if the following events occur:

- significant events/issues affecting the functioning of the investment funds managed by the IFM
- larger redemptions at the level of Luxembourg-regulated investment funds (UCITS, Part II UCI and a specialized investment fund (SIF)) managed by the IFM (i.e., daily net redemptions exceeding 5% of the net asset value (NAV), net redemptions over a calendar week exceeding 15% of the NAV and/or the application of gates/deferred redemptions)

The reporting entered into force on 2 June 2020.

c) ESMA Q&A: implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)

On 28 May 2020, European Securities and Market Authority (ESMA) issued a **Q&A** on the implementation of EMIR regulation which was updated on 8 July 2020 and on 28 September 2020.

On 8 July 2020, the updated Q&A 11(b) clarifies that the counterparties should follow their local time and the relevant calendar of their Member State to specify the “working day” in the context of determining the deadline for reporting under EMIR.

On 28 September 2020, the updated Trade Repository (TR) Q&A 1(c) clarifies that the counterparties should use the underlying to determine the asset class of total return swaps when reporting under EMIR.

A new TR Q&A clarifies that the reporting of the field *reference entity* for credit derivatives can be made with a country code only in the case where the reference entity is a supranational, a sovereign or a municipality.

Another new TR Q&A indicates how the fields *execution timestamp*, *effective date*, *maturity date* and *settlement date* should be reported for Forward Rate Agreement derivatives (FRAs).

d) The ESMA published supervisory briefing on the supervision of costs in UCITS and AIFs

On 4 June 2020, ESMA issued **a press release** announcing the publication of its supervisory briefing on the supervision by national competent authorities of costs applicable to UCITS and AIFs. The supervisory briefing focuses on how national competent authorities (NCAs) supervise the relevant cost-related provisions under UCITS Directive 2009/65/EC and the Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD), and on the IFM's obligation to prevent undue costs being charged to investors.

On 25 June 2020, the CSSF published **a press release** to draw the attention of IFMs on this supervisory briefing, in particular, to Sections 3 and 4, which contain criteria to assess the notion of undue costs and to supervise the obligation to prevent undue costs being charged to investors in UCITS and AIFs, notably through a requirement to put in place a structured pricing process that takes into account the requirements defined under Section 3.

e) MMFR reporting: the CSSF releases national specifications

On 16 June 2020, the CSSF issued **a communiqué** regarding reporting according to Article 37 of the Money Market Funds Regulation (MMFR). Further to the ESMA's publication of the updated XML schema (version 1.1) and respective reporting instructions on 4 June 2020, the CSSF released the national specifications to be respected.

On 22 July 2020, the CSSF **issued a communiqué** stating that, as of 22 July 2020, it accepts the submission of reporting under Article 37 of the MMFR according to the amended XML schema (version 1.1) published by the ESMA on 4 June 2020 in the test environment.

The submission of the reporting is exclusively authorized through the transmission channels currently accepted by the CSSF.

The national specifications to be respected by the entities under the supervision of the CSSF to submit the reporting of money market funds are published on its website, as follows:

- https://www.cssf.lu/wp-content/uploads/MMFR_Handbook.pdf

- <https://www.cssf.lu/en/document/xml-lu-specifications-for-mmf-reporting/>
- <https://www.cssf.lu/en/document/example-file-for-mmf-reporting/>

The CSSF also indicated that the reference period for the first reporting remains Q1 2020 but submissions to NCAs of quarterly reporting for Q1 and Q2 2020 have been postponed to September 2020. In this context, as of 1 September 2020, the CSSF will accept submissions of quarterly reporting for Q1 and Q2 2020 and the following quarters in the production environment.

On 2 October 2020, ESMA announced **an update** of the validations of the technical instructions for reporting under the Money Market Funds Regulation (MMFR). The proposed changes are not related to the published XML schemas. The changes only add new warning type validations or provide clarifications on existing validation rules in order to fix inconsistencies or ease the understanding of the rules;

f) The CSSF regulation and circular regarding third-country firms providing investment services or performing investment activities

On 29 June 2020, **regulation 20/02 on the equivalence of certain third countries** with regard to the supervision and admission rules for the provision of investment services or the exercise of investment activities and ancillary services by third-country undertakings was published in the official Luxembourg gazette.

In accordance with Article 32-1, paragraph 1 of the amended law on the financial sector, third-country firms that wish to provide investment services or activities as well as ancillary services in Luxembourg to eligible counterparties and to professional clients may establish a branch in Luxembourg and they will be subject to the same authorization rules as those applying to credit institutions and investment firms.

In the absence of an equivalence decision taken by the European Commission in accordance with Article 47 (1) of Regulation (EU) 600/2014, a third-country firm may also provide investment services or activities as well as ancillary services in Luxembourg to eligible counterparties and professional clients if it has been authorized in its jurisdiction to provide the investment services and activities it wishes to provide in Luxembourg, if it is subject to supervision and to authorization rules that the CSSF deems equivalent to those laid down in this law, and if cooperation between the CSSF and the supervisory authority of this firm is ensured.

Pursuant to Article 2 of the new regulation, the following third countries are considered to apply to undertakings that have their central administration or statutory seat in a third country where the supervision and admission rules are equivalent to the requirement of the law of the financial sector:

- the Swiss Confederation
- the United States
- Hong Kong Special Administrative Region of the People's Republic of China
- Republic of Singapore

On 2 July 2020, the CSSF also issued the new Circular 20/743 amending Circular 19/716, which provides requirements that a third-country undertaking must comply with to benefit from the regime of Article 32-1 of the LSF.

Circular 20/743 provides that if an investment service is provided on the basis of reverse solicitation,[1] the third-country undertaking is not required to apply for an authorization in Luxembourg or to establish a branch in Luxembourg.

Circular 20/743 also clarifies the concept of "services provided in Luxembourg in relation to investment services or the performance of investment activities and auxiliary services" in accordance with Article 32-1 of the LSF.

The CSSF considers that the investment service is considered to be provided in Luxembourg if one of the following requirements is met:

- the respective third-country undertaking is established in Luxembourg
- the respective third-country undertaking provides an investment service in Luxembourg to a retail client established or located in Luxembourg

- the place where "characteristic provision" of the service is provided, i.e., the essential provision for which a payment is due, is Luxembourg

[1] "Reverse solicitation" is defined as a situation where a third-country firm provides an investment service or exercises an investment activity at the request of a client established.

g) The CSSF issues FAQ on CSSF Circular 02/77 regarding the protection of investors in case of NAV calculation errors and the correction of the consequences resulting from noncompliance with the investment rules applicable to UCIs

On 7 July 2020, the CSSF issued [an FAQ document on Circular 02/77](#), which includes a Q&A in relation to the protection of investors in case of NAV calculation errors and the correction of consequences resulting from investment breaches.

The FAQ on Circular CSSF 02/77 applies to UCITS and UCIs subject to part II of the 2010 Law and it outlines the principles to be applied by SIFs.

h) Brexit update

On 7 July 2020, the European Commission [published](#) its readiness notice to stakeholders on the withdrawal of the UK from the EU rules on asset management.

UCITS management companies, alternative investment fund managers and investment funds were advised to assess the consequences of the end of the transition period in view of this notice and take appropriate action, such as obtaining an authorisation to manage non-EU AIFs (former UK UCITS or UK AIFs), informing investors of the consequences of the end of the transition period and reviewing, when appropriate, the delegation of certain operational functions to providers established in the United Kingdom. Following the change of legal status of the UK funds, investors should also check when appropriate the modification of eligibility of their investments.

On 1 October 2020, ESMA updated statements, issued in March 2019 and October 2019 reflecting ESMA's approach, should the UK have left the EU under a no-deal Brexit, on its approach to the application of key provisions of MiFID II/MiFIR and the Benchmark Regulation (BMR) after the end of the Brexit transition period, in particular regarding [the consequences of Brexit for the ESMA register for benchmark administrators and third country benchmarks](#) under the Benchmark Regulation.

On 21 October 2020, the UK government [issued a press release](#) informing about the introduction of a [Financial Services Bill](#) to Parliament aiming at ensuring the UK's regulatory framework continues to function effectively for the UK after leaving the EU.

According to the [Explanatory notes](#), this Bill will enhance the UK's world-leading prudential standards and promote financial stability by enabling the implementation of the full set of Basel III standards, a new prudential regime for investment firms, and giving the FCA the powers it needs to oversee an orderly transition away from the LIBOR benchmark.

The Bill will also promote openness between the UK and international markets by introducing a new mechanism to simplify the process whereby overseas investment funds can be marketed in the UK and introduce a number of measures to maintain the effectiveness of the financial services' regulatory framework and sound capital markets.

i) ESMA clarification on the external support within the meaning of Article 35 of the MMF Regulation

On 9 July 2020, the ESMA published a [public statement](#) on external support under Article 35 of the Money Market Funds (MMF) Regulation, to clarify the potential interaction between the intermediation of credit institutions and the requirements of Article 35 of the MMF Regulation on external support. It also aims to coordinate the supervisory approaches of national competent authorities (NCAs) in light of liquidity challenges for MMFs in the context of the current COVID-19 pandemic.

j) Sustainable finance

On 17 July 2020, the European Commission adopted new rules that set out minimum technical requirements for the methodology of EU climate benchmarks, as well as a number of environmental, social and governance disclosure requirements.

On 13 July 2020, the European Commission published a report that aims to carry out a test run in relation to

the draft EU Ecolabel criteria for financial products and, in particular, to test the application of a draft criterion for equity funds on a sample of 101 "green" UCITS equity funds domiciled in the EU.

On 22 June 2020, [Regulation \(EU\) 2020/852](#) of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, was published in the EU Official Journal.

This regulation introduces a EU-wide classification system (or taxonomy) of environmentally sustainable activities, provided that they contribute to at least one of the listed objectives (climate change mitigation and adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, including waste prevention and increasing the uptake of secondary raw materials, pollution prevention and control, and protection and restoration of biodiversity and ecosystems).

This regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable and provides new disclosure obligations for a wide range of entities, including financial market participants and large non-financial companies.

k) CSSF updates regarding the FAQ on the law of 17 December 2010

On 7 August 2020, the CSSF updated [its FAQ on the law of 17 December 2010](#) concerning question 1.13 on the eligibility of loans. According to the CSSF, loans do not constitute eligible investments for UCITS.

Consequently, UCITS that would be invested in loans have to disinvest from those positions by 31 December 2020, taking into account the best interests of investors.

In addition, the prospectuses of those UCITS offering the possibility to invest in loans have to be updated by 31 March 2021 at the latest, in order to no longer provide for the possibility for such investments.

On 10 March 2020, the CSSF published another update of its FAQ on UCITS. The updated FAQ contains an additional query with regard to the "disclosure of the performance fee, the investment manager's fee and the investment advisor's fee to investors of a UCITS."

On 3 April 2020, the ESMA published [guidelines on performance fees in investment funds](#), applicable to UCITS and certain types of AIFs.

l) AIFMD review

On 18 August 2020, the ESMA addressed [a letter](#) to the European Commission highlighting some areas of the AIFMD where improvements could be made ("**Letter**").

The Letter is a result of the ESMA's significant exchanges with NCAs on the practical aspects of the AIFMD since its publication in 2011, as well as of the KPMG report.

Annex I to the Letter lists 19 key topics identified in the AIFMD framework and the ESMA's proposed changes. Annex II to the Letter outlines the key reporting issues where improvements could be made.

For more information, you can read our [insight](#) dated 22 September 2020.

The 22 October 2020, the EU Commission has released [a consultation paper](#) on the AIFMD review under the form of a comprehensive and detailed Questionnaire for the industry participant to respond before the 29 January 2021.

m) CSSF Circular 20/752: ESMA Guidelines on Liquidity Stress Testing in UCITS and AIFs

On 29 September 2020, the CSSF published the new Circular 20/752 regarding the ESMA Guidelines on Liquidity Stress Testing in UCITS and AIFs (Ref. ESMA/34-39-897 EN) ("**Guidelines**").

Circular 20/752, which entered into force on 30 September 2020 with the Guidelines, confirms that the CSSF applies the Guidelines and integrates them into its administrative practice and regulatory approach with a view to promote supervisory convergence in this field at the European level.

Perhaps the most striking element here is the broad scope of application, as Circular 20/752 virtually applies to all Luxembourg investment vehicles.

Section I "Scope" of Circular 20/752 states that the circular applies to the following IFMs in respect of the UCITS and AIFs they manage, including exchange traded funds (ETFs), whether these ETFs operate as

UCITS or AIFs and leveraged closed-ended AIFs:

- management companies incorporated under Luxembourg law and subject to Chapter 15 of the Luxembourg law of 17 December 2010 on UCIs, as amended ("2010 Law")
- management companies incorporated under Luxembourg law and subject to Article 125-2 of Chapter 16 of the 2010 Law
- Luxembourg branches of IFMs subject to Chapter 17 of the 2010 Law authorized under the provisions of Article 125-2 of the 2010 Law
- UCITS investment companies that have not designated a management company within the meaning of Article 27 of the 2010 Law
- alternative investment fund managers authorized under Chapter 2 of the Luxembourg law of 12 July 2013 on alternative investment fund managers, as amended ("2013 Law")
- internally managed AIFs within the meaning of point (b) of Article 4(1) of the 2013 Law

For money market funds governed by the MMFR 2017/1131 of 14 June 2017, the Guidelines apply in part as further specified in point 6 of Section I ("Scope") of the Guidelines in addition to the separate ESMA guidelines on stress test scenarios under Article 28 of the MMFR as implemented initially into Luxembourg regulation by means of CSSF Circular 18/698 and subsequently updated by means of CSSF Circular 20/735.

Circular 20/752 also applies to open-ended and leveraged closed-ended SIFs not governed by Part II of the Luxembourg law of 13 February 2007 on SIFs, as amended ("**2007 Law**") and that are subject to the provisions of CSSF Regulation No. 15-07 laying down detailed rules for the application of Article 42a of the 2007 Law with regard to the requirements in relation to risk management and conflicts of interest.

The CSSF also recommends that the following consider the provisions of Circular 20/752: (i) open-ended and leveraged closed-ended UCIs subject to Part II of the 2010 Law, which are managed by a registered alternative investment fund manager as defined in the 2013 Law; and (ii) leveraged SICARs under the Luxembourg law of 15 June 2004 on the investment company in risk capital as amended, which are AIFs managed by a registered alternative investment fund manager as defined in the 2013 Law that are not AIFs in accordance with the definition of Article 1(39) of the 2013 Law.

(i) Summary of the main elements of the Guidelines

The CSSF adopts the definition of liquidity stress testing (LST) given by the Guidelines, i.e., a risk management tool within the overall liquidity risk management framework of an IFM that simulates a range of conditions, including normal and stressed (i.e., extreme, unlikely or unfavorable) plausible conditions, to assess their potential impact on the funding (liability), assets, overall liquidity of a fund and the necessary follow-up actions.

The CSSF indicates that three sections of the Guidelines relate to IFMs (Section V.1.), depositaries (Section V.2.) and the interaction of IFMs with NCAs (Section V.3.).

(ii) Guidelines applicable to IFMs

Sixteen separate guidelines for IFMs cover various topics from the design, governance and implementation of LST, across frequency and concrete use (for assets and liabilities, scenarios and data) and the aggregation of LST across various different funds.

A few examples of the 16 guidelines are as follows:

- IFMs having a strong understanding of the liquidity risks arising from the assets and liabilities of each specific fund's balance sheet and its overall liquidity profile in order to be able to tailor appropriate and focused LST for each fund including various different scenarios
- documenting the LST in an LST policy within the UCITS/AIF risk management policy and reviewing it and adapting it, if necessary, periodically
- carrying out LST at least annually — or at a different frequency — based on the fund's characteristics.

(iii) Interaction with NCAs

The CSSF, at its discretion, may request the submission of an IFM's LST to help demonstrate that a fund will be likely to comply with applicable rules, including its ability to meet redemption requests in normal and stressed conditions. Furthermore, IFMs should notify the CSSF of material risks and actions taken to address them.

The CSSF requires the following actions from IFMs.

IFMs should integrate the LST policy and related procedures in their overall risk management policy and address them in the risk management procedure (RMP) to be communicated to the CSSF as per CSSF Circular 18/698.

New IFMs: In accordance with CSSF Circular 18/698, they have to include an RMP, taking into account the LST policy, in the authorization file to be submitted to the CSSF.

Existing IFMs: They have to include information on the LST policy in the next annual update of the RMP to be communicated to the CSSF.

When seeking an extension of an alternative investment fund manager's authorization to cover a new type of AIF investment strategy, an RMP adapted to the new type of strategy, including the information on the LST policy, has to be submitted in accordance with CSSF Circular 18/698.

In case the LST reveals any material risks likely to crystallize for a fund and likely to threaten its liquidity, IFMs have to inform the CSSF immediately thereof, together with the related concrete actions to address these risks. The assessment of the adequacy and effectiveness of such actions have to be included in the report of the permanent risk management function to be submitted to the CSSF on an annual basis in accordance with CSSF Circular 18/698.

NCAAs, at their discretion, may request that IFMs notify them of other information relating to the LST (including models and results), for instance, during a period of large redemptions across the market.

(iv) Guidelines applicable to depositaries

Depositaries are not required to assess the adequacy nor to replicate or challenge the LST undertaken by an IFM. Depositaries however have to set up appropriate verification procedures to check that the IFM has documented procedures in place for its LST program to ensure that each fund acts in compliance with obligations under the UCITS Directive and the AIFMD. As outlined in Circular 20/752, depositaries may take action if they are not satisfied that LST is in place.

What next?

The addressees of Circular 20/752 should ensure that they comply with Circular 20/752 and the Guidelines that have been in force since 30 September 2020. This means, in practice, that IFMs must put in place/update their LST, adapt their RMPs, be equipped with the adequate LST management tools in proportion to the risks posed by the funds they manage in line with Circular 20/752 and the Guidelines, and perhaps consider whether the offering documents of such funds need to be amended.

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