PURE CAPITAL

INDEPENDENT ASSET MANAGEMENT

LEGAL UPDATE

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INDEPENDENT ASSET MANAGEMENT

FOR ALL TYPES OF FUNDS

UCITS and AIFs cross-border marketing notifications

As announced in September 2024, new information (predominant AIF type and contact point concerning the notification letter, invoices and facilities for investors) are now collected through marketing notification and de-notification requests.

Consequently, eDesk CBDF module and S3 API channel have been adapted. All the modifications, in particular concerning the JSON schema used for transmissions through the API channel, are listed in the new version of the user guide dedicated to the cross-border marketing.

Greenwashing and green finance: the CSSF calls for vigilance and informs on www.letzfin.lu

The market for sustainable financial products is growing rapidly, driven by increasing demand for environmentally and socially responsible investments. However, greenwashing—where companies falsely present themselves as more sustainable than they are—poses a significant risk to investors.

The Commission de Surveillance du Secteur Financier (CSSF) emphasizes the need for vigilance and offers recommendations on its platform www.letzfin.lu.

Shortening Settlement Cycle in the EU

The Commission de Surveillance du Secteur Financier (CSSF) highlights the European Securities and Markets Authority's (ESMA) Final Report, published on 18 November 2024, proposing the transition to a T+1 settlement cycle in the EU, set to begin on 11 October 2027. This date is intended to align with the UK's similar move and aims to enhance efficiency, resilience, and market integration while advancing the objectives of the Savings and Investment Union.

To address these issues, ESMA plans to collaborate with the European Commission and the European Central Bank on governance and implementation.

The CSSF encourages relevant entities to start assessing the potential impacts of this transition, including changes to processes, systems, and resources. Entities should evaluate whether major functional or organisational adaptations are needed, consider extending existing mechanisms, or develop new tools to prepare for the shift to T+1.

DORA Regulation – Reminders and Advice on Preparedness

The Digital Operational Resilience Act (DORA) came into effect on January 17, 2025. In anticipation, European supervisory authorities issued a joint statement on December 4, 2024, clarifying expectations for financial entities. The Commission de Surveillance du Secteur Financier (CSSF) highlights the following key points for compliance:

1. LEI Code: Financial entities must obtain a Legal Entity Identifier (LEI) to meet the reporting obligations under DORA. This includes requirements outlined in Level 2 technical standards for the information registry and major ICT incident reporting.

2. ICT Incident Notification: Starting January 17, 2025, entities must report major ICT-related incidents via the CSSF's eDesk platform. Entities are advised to create the "ICT Incident Notifier" role in eDesk before this date to ensure compliance.

3. ICT Agreements: ICT outsourcing agreements that have already been notified under CSSF Circular 22/806 do not need re-notification. However, agreements made before January 17, 2025, that were not previously classified as critical under the circular must be recorded in the Information Registry but do not need to be re-notified.

The entry into effect of DORA regulation will take precedence over any overlapping elements or requirements present in existing CSSF circulars, notably:

- CSSF 20/750, which specifies requirements for ICT and security risk management;
- CSSF 22/806, which covers outsourcing arrangements (especially ICT outsourcing);
- CSSF 24/847, which deals with the ICT-related incident reporting framework.

The CSSF reminds financial entities that other topics covered by the aforementioned circulars, which are not related to DORA, remain applicable in their current form.

The ESA and the CSSF are working on updates to the relevant texts (guidelines and circulars), which will be published in due course. Meanwhile, practical modalities regarding reporting obligations are already anticipated:

- Reminder of the press release from December 5, 2024
- Reporting of major ICT-related incidents and significant cyber threats
- Reporting of the information registry

These measures aim to ensure that financial entities are fully prepared for DORA's requirements.

CSSF issues UCI notification forms for errors and non-compliance under Circular 24/856

On 17 December 2024, the Commission de Surveillance du Secteur Financier (CSSF) released UCI forms for error and non-compliance notifications under Circular CSSF 24/856, effective 1 January 2025. This circular, which replaces CSSF 02/77, introduces new error categories and updates notification procedures, including secure submission via the eDesk platform or API (S3 protocol).

The implementation is in two phases: the first, using the eDesk PREPROD platform, allows UCIs, IFMs, and UCI administrators to familiarize themselves with the forms. Errors detected by 31 December 2024 must still be reported using the old forms. The second, starting 1 January 2025, will require reporting through the new forms on the eDesk PRODUCTION platform. The CSSF will publish a user guide and expects some delays during the initial adjustment period.

FAQ on Circular 24/856

On 24 December 2024, the Commission de Surveillance du Secteur Financier (CSSF) published an FAQ on Circular CSSF 24/856 regarding investor protection in the event of an NAV calculation error, effective from 1 January 2025. The circular outlines procedures for significant NAV errors, internal controls, corrective actions, and notification to the CSSF.

UCIs are required to notify the CSSF of significant NAV errors, including the source of the error and the corrective measures taken. If a UCI's internal NAV error tolerance is lower than the threshold specified in the circular, the UCI must adhere to the lower tolerance for notifications. The circular also allows for the use of "de minimis" amounts to compensate affected investors. Closed-ended UCIs are exempt from submitting notifications for NAV errors if they fall outside the scope of Chapter 4 of the circular. Additionally, it provides guidance on correcting underpayment errors and the conditions under which management fees can be retroactively adjusted.

Guide for UCI notifications under Circular 24/856

On 31 December 2024, the Commission de Surveillance du Secteur Financier (CSSF) published a practical guide for UCI notifications under Circular CSSF 24/856.

The guide outlines the scope, types of required notifications (e.g., NAV errors, non-compliance with investment rules), and submission procedures via the eDesk/S3 platforms. It includes sections on the authentication process, creating and submitting forms, and handling special audit reports. Notifications can be submitted using structured files via S3 or online forms on eDesk. The guide emphasizes the need for accurate information to ensure compliance and efficient processing by the CSSF.

CSSF Feedback Report – Self-assessment questionnaire, separate report and management letter for funds

Context

On 22 December 2021, the CSSF (Commission de Surveillance du Secteur Financier) issued Circular CSSF 21/790, as part of a series of circulars (CSSF 21/788, 21/789, and 21/790) aimed at improving the risk-based supervision of investment fund managers and undertakings for collective investment (UCIs).

This circular applies to UCITS, UCIs Part II (under the Law of 17 December 2010), SIFs (Specialised Investment Funds), and SICARs (Investment Companies in Risk Capital).

The circular introduces several key requirements designed to enhance oversight and ensure uniform regulatory practices regarding the following:

1. Self-Assessment Questionnaire (SAQ) :
2. Separate Report (SR) :
3. Management Letter (ML) :
4. Proactive Notification to the CSSF:

By establishing these measures, the circular aims to improve prudential supervision and strengthen compliance with AML/CFT regulations through enhanced reporting, transparency, and accountability.

Observations

1. Organisation of the Fund

1.1. Preliminary information on UCI

As at 31 December 2023, there are 3.274 UCIs domiciled in Luxembourg which fall in the scope of the SAQ, SR and ML, out of which 1.596 UCITS (49%), 239 UCIs Part II (7%), 1.246 SIFs (38%) and 193 SICARs (6%).

1.2. Oversight of the UCI

1.2.1. Formal meetings of the dirigeants of UCIs

The CSSF expects the dirigeants of UCIs to organise formal meetings according to a frequency which allows them to ensure an adequate oversight of the activities of the UCIs. The determination of the frequency shall notably take into account the specificities and risks related to the UCIs. For instance, for open-ended UCIs, the CSSF would not consider a frequency lower than quarterly to be appropriate.

1.2.2. Conflicts of interest

In this context, the CSSF wishes to point out that UCIs having appointed an IFM shall for the purpose of the questions pertaining to the identification / management of conflicts of interest at the level of the UCIs also take into account the policies and procedures in place at the level of the appointed IFM.

With regards to SIFs and SICARs which are not managed by an IFM, representing a small part of the SIFs and SICARs in Luxembourg, the CSSF reminds that such UCIs shall be structured and organized in such way as to minimize the risk of investors' interests being prejudiced by conflicts of interest.

The CSSF expects that an effective conflicts of interest policy and effective procedures are in place for all UCIs.

1.2.3. Investors in UCIs, SIFs and SICARs

In accordance with the additional explanations given under the so-called tooltip in the SAQ ("tooltip clarifications"), the CSSF expects that the processes/procedures in place for SIFs / SICARs ensure in any case that the well-informed status of investors in a SIF or SICAR is verified. This holds also true for the investors in closed-ended SIFs and SICARs. An additional tooltip will be added in CISERO clarifying that, if the SIF or SICAR has appointed an IFM or other service provider for the purpose of verifying the well-informed status of the investors, a good practice is to formally approve such procedure by the dirigeants of UCIs.

2. Investment Compliance

2.1. Treatment of Active and Passive Breaches

The CSSF observed that a limited number of SIFs, particularly those without an appointed IFM, lacked a formal policy addressing the treatment of active and passive breaches at the level of the fund(s). This does not align with the CSSF's expectations, as outlined in previous communications (including the CSSF FAQ on Circular CSSF 02/77). In this context, the CSSF reminds the industry of the introduction of Circular CSSF 24/856, which came into effect on 1 January 2025, replacing Circular CSSF 02/77. This new circular applies to all regulated UCIs (UCITS, UCIs Part II, SIFs, SICARs) and requires adequate control mechanisms at the UCI or IFM level to ensure ongoing compliance with investment rules, including a structured approach to control frequency, as detailed in UCI policies and procedures.

2.2. Investment Compliance Control Framework

The CSSF review found that most UCIs have robust policies and processes in place for ensuring compliance with legal, regulatory, and contractual investment provisions. However, a small number of UCIs did not have a standardized or automated post-trade investment compliance control framework. While some UCIs use manual controls due to the nature of their investments or portfolio size, the CSSF acknowledges the principle of proportionality.

Additionally, a few UCIs did not have a fully comprehensive framework in place for Sustainable Finance Disclosure Regulation (SFDR) compliance, missing coverage of certain SFDR investment rules. The CSSF reiterates that UCIs must implement an ex post compliance control framework that addresses all applicable investment restrictions.

2.3. Eligibility Requirements for Investments by UCITS

The CSSF observed that some UCITS did not implement pre-trade controls to identify investments that qualify under the "trash ratio" (Article 41(2)(a) of the Law of 17 December 2010). These UCIs also failed to perform adequate pre-investment liquidity analyses and to verify regulatory compliance for such investments. The absence of these controls was primarily due to the non-existence of a trash ratio in some UCITS or the reliance on post-trade controls. The CSSF emphasizes the obligation for IFMs managing UCITS to conduct thorough forecasts and analyses regarding the potential contributions of foreseen investments to the portfolio's composition, liquidity, and risk profile, using reliable and up-to-date information. IFMs must ensure that risks of acquired transferable securities are adequately captured by the UCITS' risk management process, and necessary pre-trade controls must be in place before any investment in these securities.

3. Valuation

3.1. Oversight & valuation policies, processes and procedures

For that purpose, the CSSF expects the dirigeants to formally approve the valuation policies and procedures in place for the UCIs, thereby giving due consideration to the valuation risks to which the UCIs are exposed to.

3.1.2. Escalation process of material valuation issues

The CSSF emphasises the importance of an escalation process in the context of the oversight work performed by the dirigeants of UCIs concerning the valuation of the investments and expects significant valuation issues.

3.1.3. Valuation frequency of investments of the UCIs

In this context, the CSSF wishes to point to the importance for open-ended UCIs to have in place appropriate procedures that ensure the proper and accurate valuation of the assets and liabilities of the UCIs for the calculation of each net asset value so as to ensure that the net asset value is accurate and that subscription and redemption orders can be properly executed at that net asset value, in the best interest of all the investors of the UCIs. In this context, the CSSF expects open-ended UCIs to have an alignment between the frequency of the net asset value determination and the frequency of the valuation of investments.

3.1.4. Arm's length character of transactions

The CSSF expects for all UCIs, that a documented procedure, whose objective is to ensure that transactions on quoted and unquoted investments (incl. FDIs) concluded with related parties to the UCI are done on an arm's length basis, is in place.

3.1.5. Independent valuation source

The CSSF expects for UCIs investing in more complex structured products, valued on the basis of prices/valuations obtained from a source which is not independent, to have the necessary processes in place (e.g. valuation cross-checks, reasonableness test, etc.) to ensure that the prices/valuations provide for a reliable and independent valuation of the investment.

3.2. Modified audit opinions and Management letter observations

In case the auditor includes a modified audit opinion in the audit report issued in the context of the statutory audit of the UCI, the CSSF would also like to remind UCIs that Circular CSSF 21/790 requires the dirigeants of UCIs to send a letter to the CSSF, without having been expressly required to do so by the latter, explaining the underlying reasons for the modified audit opinion, its impact on the UCI and its investors as well as the corrective measures, including the timeline for their implementation, taken by the dirigeants.

4.NAV determination

4.2. Market timing

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.

As explained in the tooltip clarifications provided in CISERO, the general coverage of the risk of market timing (as defined by Circular CSSF 04/146) in the prospectus of the Fund is not considered sufficient by the CSSF.

The CSSF expects, upon launch of a sub-fund or in case of material changes to a sub-fund that modifies its exposure profile to the risk of market timing, that this risk is subject to a specific and documented assessment in order to ensure that the rules on market timing are complied with.

4.3. Liquidity Management Tools ("LMTs")

In this context, the CSSF wishes to refer to the CSSF working paper "An Assessment of Investment Funds' Liquidity Management Tools", showing that LMTs, such as swing pricing, can mitigate dilution of the fund value.

The CSSF expects a documented internal policy/procedure to be in place for the UCIs concerning the application of the LMTs available for the UCIs.

5. Expenses

5.1. Other recurring costs ("ORC") / total expense ratio ("TER") and formalised assessment of costs/fees

It is the responsibility of the dirigeants of UCIs to ensure, on an ongoing basis, an efficient management of the UCIs in the best interest of investors and to react immediately when the financial situation of a UCI does no longer allow for such an efficient management. In order to ensure such efficient management, the CSSF expects a formalised assessment of the costs/fees together with the level of ORC / TER of the different share classes of the UCIs to be in place for UCIs. The CSSF expects furthermore that the costs/fees for a given UCI are, at least on an annual basis, discussed in a formal meeting of the dirigeants of UCIs.

5.2. Efficient Portfolio Management ("EPM") / Securities Financing Transactions ("SFT") operational costs/fees

The CSSF expects UCITS IFMs to perform a comprehensive assessment of the adequacy of the operational costs / fees that are deducted from the gross revenues arising from SFTs. In order to comply with the present requirement and notably ensure that the costs / fees do not include any hidden revenue, UCITS IFMs must be able to justify, by means also of quantitative information, the relevance of the underlying cost drivers which make up the total costs / fees borne by the UCITS.

6.Relationship with depositary

In the context of the oversight duties of depositaries, the CSSF expects depositaries to actively follow-up on all the irregularities falling under their oversight duties, whether these were identified by the depositary or not, and ensure that any irregularity is duly remediated.

RCS and UBO Registry

The draft Bill 7961, adopted on December 20, 2024, amends the regulations for the RCS and RBE in Luxembourg. It aims to improve data quality and compliance by providing tools for more effective monitoring of registered entities. The bill includes cross-checking with other registers and automated information tracking. It also outlines incentive measures and sanctions to encourage timely updates of records. A new secure electronic system will streamline information management to combat money laundering and terrorist financing.

FAQ on AML/CFT asset due diligence obligations in accordance with CSSF Regulation No 12-02

On December 13, 2024, the Commission de Surveillance du Secteur Financier (CSSF) published FAQs on AML/CFT asset due diligence under Regulation No 12-02.

The FAQs clarify professionals' obligations regarding money laundering and terrorist financing risk assessments and due diligence. It emphasizes the need for professionals to assess risks and apply suitable measures. Securities traded on regulated markets are considered lower risk, with professionals required to confirm their listing. For assets not on regulated markets, due diligence should be conducted when risks increase, based on the initial assessment. No annual renewal is needed unless there are significant changes in the risk profile.

Circular CBL 2024/245

The BCL Circular 2024/245, published on December 11, 2024, by the Banque Centrale du Luxembourg (BCL) and the Commission de Surveillance du Secteur Financier (CSSF), modifies the statistical data collection for investment funds starting from the reference period of December 2025. This update aims to align reporting requirements with the European Central Bank (ECB) regulations while reducing the reporting burden for funds.

The main changes include the introduction of new reports and updates to existing reports, such as monthly balance sheets (S 1.3), quarterly balance sheets (S 2.13), and annual reports on marketing countries (S 4.4). Specific reports are also introduced for non-UCITS funds with less frequent asset valuations. Additionally, detailed information is required regarding alternative investment funds not authorized by the CSS.

The circular also emphasizes data quality, stressing the importance of adhering to verification rules and ensuring confidentiality. The collected data may be shared with other regulatory authorities, such as the CSSF and STATEC, in compliance with applicable laws.

For funds with total assets below 300 million EUR, exemptions may be granted to alleviate their reporting obligations. Finally, this circular replaces and consolidates previous guidelines, ensuring compliance with European standards and simplifying the regulatory framework.

CBL updates reporting instructions for investment funds

On 11 December 2024, the Banque Centrale du Luxembourg (CBL) updated its reporting instructions for investment funds. The updated documents include :

- Definitions and Concepts for Statistical Reporting of Investment Funds
- Electronic Transmission Manual for Statistical Reporting of Investment Funds
- S 1.3 & S 2.13 "Statistical Balance Sheet of Investment Funds"
- S 1.6 "Information on Valuation Effects on the Balance Sheet of Non-Monetary Investment Funds"
- TPTOBS "Security-by-Security Reporting of Investment Funds"
- S 2.20 "Quarterly Financial Information" (11.12.2024)
- S 4.4 "Countries of Marketing" (11.12.2024)
- Summary of Reporting Modifications from December 2025

CBL publishes FAQ on Statistical reporting of investment funds

On 11 December 2024, the Banque Centrale du Luxembourg (CBL) published an updated FAQ on the statistical reporting of investment funds. The FAQ addresses common questions raised by investment funds and aims to supplement the instructions for statistical reporting. The updated version provides clarifications on specific issues related to the reporting changes effective from December 2025.

CSSF informs on ESMA Guidelines on funds' names using ESG or sustainability-related terms

On December 18, 2024, the Commission de Surveillance du Secteur Financier (CSSF) issued a press release on the ESMA Guidelines regarding the use of ESG or sustainability-related terms in fund names. This follows the October 21, 2024, announcement on the integration of these guidelines into Luxembourg's regulations through Circular CSSF 24/863. The Circular also sets a priority procedure for updating existing UCITS and AIFs, focusing on necessary changes. On December 13, 2024, ESMA published Q&As clarifying the guidelines, including topics like green bonds, sustainable investments, and controversial weapons. It clarified that European Green Bonds are exempt from investment restrictions, and for funds using "sustainable" in their names, at least 50% of investments should be sustainable. The guidelines will take effect on November 21, 2024, for new funds and May 21, 2025, for existing ones.

Update FAQ on SFDR

On December 18, 2024, the Commission de Surveillance du Secteur Financier (CSSF) updated its FAQ on the Sustainable Finance Disclosure Regulation (SFDR). The revisions included modifications to Section I, which outlines key European and CSSF publications, as well as Section II, which addresses CSSF FAQs. Additionally, the update clarified the application date for periodic disclosure requirements, particularly in relation to Article 11 information in the annual report. This information must now be submitted using the mandatory templates from Annexes IV and V of the SFDR RTS. Some sections related to this requirement were also removed.

UCITS

Circular CSSF 24/868

On December 9, 2024, the Commission de Surveillance du Secteur Financier (CSSF) released Circular CSSF 24/868, updating Circular CSSF 19/719 on the EBA guidelines for simple, transparent, and standardised (STS) criteria for both non-ABCP and ABCP securitisations. The guidelines aim to ensure consistent interpretation of transaction- and programme-level criteria for ABCP securitisation under EU Regulation 2017/2402, promoting uniform understanding across EU member states. The update also incorporates amendments to previous guidelines, simplifying requirements and clarifying criteria based on feedback.

FAQ concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment

The Commission de Surveillance du Secteur Financier (CSSF) has updated the questions and answers related to the Law of 17 December 2010 concerning collective investment undertakings, in the context of the entry into force of Circular 24/856, which focuses on investor protection in the event of an NAV calculation error, non-compliance with investment rules, and other errors at the level of an UCITS.

A UCITS can only invest in bank deposits, money market instruments, or other assets listed under Article 41(1) of the Law of 2010 if clearly specified in its investment policy. If investments are made outside this scope, the provisions of Circular CSSF 24/856 apply.

UCITS management companies must ensure hedge ratios for share classes with derivative overlays stay between 95% and 105%. If breached, Circular CSSF 24/856 does not apply. Instead, UCITS are expected to implement monitoring procedures to maintain compliance, with corrective actions taken if necessary.

In case of an active VaR limit breach (either the regulatory 20% for absolute VaR or 200% for relative VaR, or a lower internal limit), UCITS must notify the CSSF via email, providing details like the entity name, fund details, VaR method, breach dates, and reasons. Further clarification may be requested. UCITS should not use UCI error reporting forms under Circular CSSF 24/856 for this situation.

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