

In case of discrepancies between the French and the English text, the French text shall prevail

CSSF Regulation N° 15-08 laying down detailed rules for the application of Article 7a of the law of 15 June 2004 relating to the investment company in risk capital (SICAR) as regards the requirements in relation to the management of conflicts of interest for SICARs which are not referred to in the specific provisions of Part II of that law

(Mémorial A – No 3 of 13 January 2016)

The Executive Board of the Commission de Surveillance du Secteur Financier,

Having regard to Article 108a of the Constitution;

Having regard to the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), and in particular Article 9(2) thereof;

Having regard to the Law of 15 June 2004 relating to the investment company in risk capital (SICAR);

Decides:

**CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS**

Article 1

Subject matter

This regulation lays down the detailed rules for the application of Article 7a(1) of the law of 15 June 2004 relating to SICARs concerning the organisational structures and requirements whose objective is to minimise the risk of conflicts of interest.

Article 2

Scope

This regulation shall apply to SICARs within the meaning of Article 1 of the law of 15 June 2004 relating to SICARs, which are not covered by the specific provisions under Part II of this law that apply to SICARs whose management is carried out by an approved manager within the meaning of Chapter 2 of the law of 12 July 2013 on alternative investment fund managers or of Chapter II of Directive 2011/61/EU.

Article 3

Definitions

For the purpose of this regulation, the following definitions shall apply in addition to those laid down in the law of 15 June 2004 relating to SICARs:

- (1) "directors" shall mean the persons within the meaning of Article 12(3) of the law of 15 June 2004 relating to SICARS;
- (2) "relevant person" shall mean any person involved in the activities of the SICAR or any person directly or indirectly linked to the SICAR.

CHAPTER II

CONFLICTS OF INTEREST

Article 4

Criteria for the identification of conflicts of interest

1. For the purpose of identifying the types of conflicts of interest that arise in the course of providing services and carrying out activities and whose existence may damage the interests of the SICAR, SICARs shall take into account, by way of minimum criteria, the question of whether a relevant person, natural or legal, is in any of the following situations, whether as a result of carrying out collective portfolio management activities or otherwise:

- (a) that person is likely to make a financial gain, or avoid a financial loss, at the expense of the SICAR;
- (b) that person has an interest in the outcome of a service provided to the SICAR or to another client or of an activity carried out for their benefit, or of a transaction carried out on behalf of the SICAR or of another client, which is distinct from the interest of the SICAR in that outcome;
- (c) that person has a financial or other incentive to favour the interests of another client or group of clients over the interests of the SICAR;
- (d) that person carries on the same activities for the SICAR as for one or several clients that are not SICARs;
- (e) that person receives or will receive from a person other than the SICAR an inducement in relation to the collective portfolio management activities performed for the benefit of the SICAR, in the form of monies, goods or services, other than the standard commission or fee for that service.

2. When identifying the types of conflicts of interest, SICARs shall take into account the interests of the SICAR, including those derived from their membership of a group or from the performance of services or activities, the interests of the clients and the obligations of the SICAR towards its investors.

Article 5

Conflicts of interest policy

1. SICARs shall establish, implement and maintain 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 SICAR and the nature, scale and complexity of its activity.

In addition, SICARs shall establish, implement and maintain a policy to prevent any relevant person from entering into personal transactions that may give rise to a conflict of interest.

SICARs shall set up an adequate policy aiming to prevent or manage any conflict of interest resulting from the exercise of voting rights attached to instruments held.

Where the SICAR is a member of a group, the policy shall also take into account any circumstances which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph (1) shall in particular:

(a) identify, with reference to the activities of collective portfolio management carried out by or on behalf of the SICAR, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the SICAR;

(b) define procedures to be followed and measures to be adopted in order to manage such conflicts.

3. SICARs shall, as part of their authorisation file, confirm to the CSSF that they have set up a conflicts of interest policy.

Article 6

Independence with regard to conflict management

1. The procedures and measures provided for in point (b) of Article 5(2) of this regulation shall 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 SICAR and of the group to which it belongs, and to the extent of the risk of damage to the interests of the SICAR.

2. The procedures to be followed and measures to be adopted in accordance with point (b) of Article 5(2) of this regulation shall include the following where necessary and appropriate for the SICAR to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities of collective portfolio management involving a risk of a conflict of interest where the exchange of that information may harm the interests of the SICAR;

(b) the separate supervision of relevant persons whose principal functions involve carrying on activities of collective portfolio management on behalf of, or providing services to, clients or investors whose interests may conflict, or where these clients represent different interests that may conflict with the interests of the SICAR;

(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 several distinct collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

If the adoption or the implementation of one or more of those measures and procedures does not ensure the requisite degree of independence, SICARs shall adopt such alternative or additional measures and procedures as will be necessary and appropriate for that purpose.

Article 7

Management of activities giving rise to a detrimental conflict of interest

1. SICARs shall keep and regularly update a record of the types of collective portfolio management activities carried out by or on behalf of the SICAR in which a conflict of interest entailing a material risk of damage to the interests of the SICAR 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 SICAR to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that the risk of damage to the interests of the SICAR or of its investors will be prevented, the directors shall be promptly informed so as to be able to take any measure necessary to ensure that the SICAR will always act in the best interests of the SICAR and its investors.

3. SICARs shall inform the investors of the situations referred to in paragraph (2) by means of any appropriate durable medium and provide the reasons for their decision.

Article 8
Publication

This regulation shall be published in the Mémorial and on the CSSF website.

The regulation shall enter into force on the first day of the month following its publication in the Mémorial.

SICARs existing upon entry into force of this regulation shall have until 31 March 2016 at the latest to comply with the provisions of this regulation.

Luxembourg, 31 December 2015

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