SUPERVISION OF SECURITISATION UNDERTAKINGS

1. Developments in the sector of authorised securitisation undertakings
2. Prudential supervisory practice
1. DEVELOPMENTS IN THE SECTOR OF AUTHORISED SECURITISATION UNDERTAKINGS

During 2009, the CSSF received five applications for registration on the official list of authorised securitisation undertakings subject to the law of 22 March 2004 on securitisation.

The following four multiple-compartment securitisation undertakings were granted authorisation by the CSSF during 2009:
- PCAM Issuance S.A.
- SecurAsset S.A.
- Flexis S.A.
- Stork Acceptance S.A.

The securitisation undertaking iStructure S.A. was withdrawn from the official list during 2009.

Further to the CSSF’s request based on Article 25(2) of the law of 22 March 2004 on securitisation, the 1st vice-president of the Luxembourg district court, sitting in commercial matters, appointed KPMG ADVISORY s.à r.l., represented by Mr. Eric Collard, on 11 February 2010 as provisional administrator (administrateur provisoire) of the authorised securitisation undertaking Lifemark S.A. for a period of six months from the delivery of the order. The provisional administrator shall manage and direct Lifemark S.A., put in place mechanisms for the control and monitoring of the activities of Lifemark S.A. and objectively look after the interests of Lifemark S.A., of its creditors and investors while working together with the CSSF. This mandate supersedes and terminates the previous one granted by the court order of 18 November 2009. The CSSF requested this new mandate following the provisional administrator’s report on the first mandate, in order to ensure the highest degree of objectivity and transparency in the management of Lifemark S.A., with the aim to protect all investors.

As at 31 December 2009, 23 securitisation undertakings were registered on the official list of securitisation undertakings against 20 entities as at the end of 2008. Two application files of securitisation undertakings were still being processed at the end of 2009. The balance sheet total of authorised securitisation undertakings exceeded EUR 12 billion at the end of 2009, i.e. a decrease of EUR 4.5 billion against 2008.

The submitted application files reveal that securitisation transactions mainly consist in the securitisation of debt, loans and other comparable assets, as well as in repackaging transactions in the form of structured products issues linked to various financial assets.

In general, the securities issued by securitisation undertakings are bonds and subject to foreign law. In the vast majority of cases, the articles of incorporation nevertheless reserve the right for the securitisation undertaking to execute securitisations by issuing shares. Some securitisation undertakings also have the possibility to issue warrants.

To date, the CSSF has not received any application file for the authorisation of a fiduciary-representative under Luxembourg law, even though the law of 22 March 2004 on securitisation has established a specific legal framework for these independent professionals in charge of representing investors’ interests. Authorised securitisation undertakings usually appoint a trustee governed by foreign law.

The CSSF expects securitisation activities to continue their slow but ongoing growth in 2010, a trend that is being confirmed by several application files that are currently under review.
2. PRUDENTIAL SUPERVISORY PRACTICE

In 2009, no changes have been made to the legal framework governing securitisation undertakings. However, the CSSF is currently analysing which lessons can be drawn from the financial crisis in terms of its role as the authorising and supervising body of securitisation undertakings, given that the financial crisis highlighted the increasing importance of the securitisation method that is chosen.

2.1. Definition of securitisation and securitisation undertakings

The CSSF is currently reviewing a number of basic principles which were published in its 2007 Annual Report.

As regards the assessment whether a transaction can be considered as a securitisation, the CSSF analyses in particular whether the criteria set out in its 2007 Annual Report (i) on loans granted by the relevant securitisation undertaking itself and (ii) on securitising commodities and other similar assets are still adequate.

In this context, the CSSF also considers adopting a global approach for securitisation undertakings acting as issuance platforms for structured products.

The CSSF will publish an update of its guidelines shortly, most probably via an “FAQ”-document.

2.2. Authorisation requirements and procedures

2.2.1. Manager and shareholders

As a general rule, the identity of the beneficial owner of the securitisation undertaking must be notified to the CSSF.

The directors of a securitisation company or of the management company of a securitisation fund must meet the honorability requirements and have the adequate experience and means required for the performance of their duties. The CSSF requires that the directors have a robust experience in the securitisation sector.

2.2.2. Representative of the debtholders

Where an authorised securitisation undertaking appoints a foreign law trustee instead of a fiduciary-representative under Luxembourg law to represent investors’ interests, this trustee must have an adequate organisation and human, financial and material resources to perform its activity correctly and in a professional manner. Details as to this trustee must be added to the application file.

2.3. On-site inspections

In 2009, the CSSF carried out an on-site inspection at a securitisation undertaking which it supervises so as to analyse *inter alia* the adequacy of its administrative and accounting organisation.

On-site inspections are an efficient tool for gathering a complete and direct overview of authorised securitisation undertakings’ situation and how they are run in practice, and this supervisory tool is therefore expected to be used more frequently.

2.4. New application files

As part of its standard procedure when receiving an application file for a new securitisation undertaking, the CSSF will invite the initiator of the undertaking to present its project in a meeting. This will allow the CSSF to speed up its review process as it may collect, in one batch, every key information of this application.