

Luxembourg, 11 October 2019

To all UK managers of alternative investment funds established in Luxembourg (AIFs), whether regulated under a sectorial law or not, that are currently appointed in compliance with article 4 of the Luxembourg law of 12 July 2013 on alternative investment fund managers (hereafter the “UK managers”) and which have not, as of date, submitted a notification through the dedicated Brexit portal.

RE: MANDATORY NOTIFICATION IN THE CONTEXT OF BREXIT FOR ALTERNATIVE INVESTMENT FUNDS ESTABLISHED IN LUXEMBOURG AND THEIR UK MANAGERS

This communication follows up on press release 19/43 with respect to the mandatory notification in the context of Brexit and the opening of dedicated eDesk portals for this purpose on 2 August 2019 for a limited period of time.

It is addressed to all UK managers (hereafter the “UK managers”) of alternative investment funds established in Luxembourg (AIFs) whether regulated under a sectorial law or not, that are currently appointed in compliance with article 4 of the Luxembourg law of 12 July 2013 on alternative investment fund managers, and which have not, as of date, submitted a notification through the dedicated Brexit portal¹.

If the UK leaves the EU without an agreement on 31 October 2019 (“hard Brexit”), UK managers which have not submitted a notification through the dedicated portal, will not be entitled to continue their activities under the benefit of the transitional period provided for under the laws of 8 April 2019 on Brexit (the “Brexit Laws”).

Therefore, as of 1 November 2019, such UK managers will be considered as “third-country managers” and will lose the benefit of their existing passporting rights under Directive 2011/61/EU as from the date of the hard Brexit.

¹ Where appropriate, the present communication should also be understood as being addressed to the AIFs themselves.

The transitional period will not be applicable to these UK managers.

These UK managers will therefore be required to seek, before 31 October 2019, the approval of the investors (and as the case may be, of the bondholders) of the AIFs they manage in order to remain a third-country manager for the eligible AIFs after the occurrence of a hard Brexit.

This possibility is, however, limited only to those AIFs whose direct or indirect investors are professional investors as defined under article 3 of Directive 2011/61/EU and/or well-informed investors as defined under article 2 of the Luxembourg law of 15 June 2004 or under article 2 of the Luxembourg law of 13 February 2007, under article 2 of the Luxembourg law of 23 July 2016, or such other equivalent local law standard, when applicable (hereafter “Professional Investors”).

The approval of the Professional Investors (and as the case may be, of the bondholders) will need to be given in accordance with the conditions prescribed for the amendment of the articles or the limited partnership agreement in the AIF’s constitutive documents, or, in the absence of such provisions, in accordance with the conditions prescribed for the amendment of the articles or limited partnership agreement under the law of 10 August 1915 on commercial companies. Any communication, such as draft resolution(s) and/or convening notices, sent to the Professional Investors (and as the case may be, to the bondholders) for such purposes, should clearly indicate the possible outcomes of the vote and their potential consequences.

In case the UK manager decides to seek the approval of the Professional Investors (and as the case may be, of the bondholders) of the AIFs it manages in order to remain as a third-country manager for each such AIF after the occurrence of a hard Brexit, prior to 31 October 2019, the CSSF shall receive, by email at brexitopc@cssf.lu, the following documents:

- i) a duly signed confirmation from the UK manager that all direct and indirect investors in the relevant AIF qualify as Professional Investors, and
- ii) a copy of the appropriate resolution(s) evidencing the approval of the Professional Investors (and as the case may be, of the bondholders), duly signed, or
when circumstances justify a delay, an explanation of such circumstances together with a copy of the appropriate convening notice (or draft consultation) duly sent to the shareholders/ limited partners, and as the case may be, to the bondholders.

Those UK managers which have not submitted a notification through the dedicated Brexit portal, or have not provided a copy of the above required documents to the CSSF will be regarded by the CSSF as operating in breach of applicable requirements on the Luxembourg territory as of the day of the hard Brexit. The CSSF reserves the right to publish a list of those UK managers in due time.

The present communication is based on the assumption of a hard Brexit occurring on 31 October 2019 and does not preclude any future legislative or regulatory modification of the third country regime in its current form.

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER