Conseil de protection des déposants et des investisseurs

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

Luxembourg, 18 October 2016

To all credit institutions and investment firms incorporated under Luxembourg law, to POST Luxembourg, to the branches of non-EU credit institutions and investment firms, as well as to UCITS management companies and to alternative investment fund managers whose authorisation includes the management of portfolios on a discretionary, client-by-client basis

CIRCULAR CSSF-CPDI 16/02 as amended by Circular CSSF-CPDI 23/35

Re : Scope of the deposit guarantee and the investor compensation

Ladies and Gentlemen,

1. This circular aims at clarifying certain eligibility criteria with respect to the deposit guarantee and the investor compensation, in accordance with Titles II and III of the amended law of 18 December 2015 on the failure of credit institutions and certain investment firms (hereinafter "law of 2015"). The circular reiterates the exclusions defined in the outdated Circular CSSF 15/630 and extends them to the "Système d'indemnisation des investisseurs Luxembourg" ("SIIL").

2. This circular is addressed to the members of the "Fonds de garantie des dépôts Luxembourg" ("FGDL") as well as to the members of the SIIL, namely to all credit institutions incorporated under Luxembourg law, to POST Luxembourg, exclusively for its provision of postal financial services, to Luxembourg branches of non-EU credit institutions (hereinafter "credit institutions"), as well as to investment firms incorporated under Luxembourg law, to Luxembourg branches of non-EU investment firms, as well as to UCITS management companies and to alternative investment fund managers whose authorisation includes the management of portfolios on a discretionary, client-by-client basis (hereinafter "investment firms").

3. Regarding the delimitation between the guarantee offered by the FGDL and the SIIL, the CPDI points out that pursuant to Article 196(6) of the law of 2015, the FGDL

is competent for any claim that results from a deposit within the meaning of Article 163, point 6, in case of the failure of a credit institution, even if the holder of the deposit is an investment firm acting on behalf of its clients or if the deposit is subject to a discretionary management mandate by an investment firm.

The money referred to in Article 195(1), point 1, encompasses money that a member of the SIIL holds on behalf of its clients, including clients' money that this member deposits at a credit institution. In case of failure of this member of the SIIL, investors are compensated by the SIIL. If however the credit institution that receives the money in deposit is unable to return the money, the reimbursement is made by the FGDL, provided that the credit institution is a member of the FGDL.

The money covered by the SIIL, in case of failure of members other than credit institutions, also includes money resulting from investment business that has not yet been credited to an account at the moment of a member's failure, such as for instance coupons or dividends that have not been cashed in yet, settlements of derivatives, sale proceeds of financial instruments that have not been credited to an account yet, or money resulting from other temporary situations such as the subscription of current or future transferable securities. Nevertheless, any credit balance which results from temporary situations deriving from normal banking transactions and which a credit institution, member of the FGDL, is required to repay under the applicable legal and contractual conditions, shall be allocated to the FGDL.

4. Regarding accounts whose holders are not absolutely entitled, Articles 174 and 196(5) of the law of 2015 apply in particular to omnibus accounts, individualised client-accounts, pooled accounts, segregated accounts and any other type of accounts whose holder is not absolutely entitled to the sums in the account (together "omnibus accounts" for the purpose of this Circular) opened with members of the FGDL/SIIL, that investment firms (and assimilated professionals such as UCITS management companies and or alternative investment fund managers whose authorisation includes the management of portfolios on a discretionary, client-by-client basis) or credit institutions use to deposit the money or instruments of their customers, provided that these customers are eligible and identified or identifiable before the guarantee is triggered. These provisions also apply to trusts and fiduciary arrangements.

Compliance with the requirement to inform customers referred to in Article 185 of the law of 2015 is achieved when the credit institution informs the holder of the account. In case of the depositary's failure at which the omnibus account is opened, the reimbursement for all the persons that are absolutely entitled is transferred to a new omnibus account opened by the holder of the distressed account unless the holder of the said account is unable to receive the compensation owed to the persons absolutely entitled.

4.bis In accordance with paragraphs 9.16 to 9.19 of Guidelines EBA/GL/2021/02 on Money Laundering/Terrorist Financing Risk Factors, adopted by Circular CSSF 21/782, persons absolutely entitled to the sums in omnibus accounts shall be considered as

beneficial owners within the meaning of the Law of 12 November 2004 on the fight against money laundering and terrorist financing and shall be identified in accordance with the framework of either simplified or enhanced customer due diligence. Therefore, it follows that persons absolutely entitled to the sums deposited in omnibus accounts must be identified before the date the FGDL or SIIL are triggered, unless such persons absolutely entitled to the sums in omnibus accounts or beneficiaries of legal arrangements have not yet been designated at the time of the triggering of the FGDL or SIIL. The lack of identifiability shall be duly justified and documented. In accordance with Articles 168 and 197(10) of the law of 2015, the CPDI is entitled to request supporting documents in this respect.

4.ter When the account holder is not the person absolutely entitled to the funds or instruments deposited, the FGDL and SIIL members shall take reasonable measures to regularly obtain information on the number of identifiable and eligible persons entitled to the sums in the account as well as on the amounts to which each of them is entitled, so as to accurately report the amount of covered deposits and covered claims to the CPDI.

In exceptional circumstances, in the absence of a reliable and up-to-date estimate of the above-mentioned information, the FGDL members report the total amount of omnibus accounts opened in their books.

5. In line with the outdated Circular CSSF 15/630, Soparfis, family wealth management companies (SPF), securitisation undertakings, offshore investment vehicles or companies and foundations (other than non-profit foundations governed by the amended Law of 21 April 1928 on non-profit associations and foundations) set up in the context of estate planning or wealth management, with the exception of "pure industrial holding companies", are assimilated to financial institutions within the meaning of Article 4, paragraph 1, point (26) of Regulation (EU) No° 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, as amended, and are thus excluded from the FGDL/SIIL's guarantee. The deposits (money and instruments) made by insurance companies in the context of unit linked life insurance policies or insurance wrappers are also excluded.

Articles 174 and 196(5) of the law of 2015, apply neither to the entities mentioned in the previous subparagraph, nor to collective investment undertakings.

6. [Deleted]

7. The CPDI has decided to implement the exception provided for under Article 196(4) of the law of 2015. Hence, the claims relating to joint investment business to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature which has no legal personality are, for the purpose of calculating the limits provided for in Article 196(3), aggregated and treated as if arising from an investment made by a single investor and only one single compensation is due under the coverage.

For any questions regarding this circular, please contact Mr Laurent Goergen (laurent.goergen@cssf.lu) or cpdi@cssf.lu.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER
Conseil de protection des déposants et des investisseurs

On behalf of the CPDI,
Claude SIMON
Chair of the CPDI