Commission de Surveillance du Secteur Financier

Version 9, 7 August 2020

FAQ - Law of 17 December 2010

Frequently Asked Questions concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment

Preliminary Remarks:

The following Frequently Asked Questions ("FAQs") aim at highlighting some of the key aspects of the laws and regulations governing UCITS from a Luxembourg perspective. The FAQs are therefore primarily addressed to management companies managing undertakings of collective investment and undertakings for collective investment in transferable securities ("UCITS") that are established in Luxembourg.

This document will be updated from time to time and the CSSF reserves the right to alter its approach to any matter covered by the FAQs at any time. You should regularly check the website of the CSSF in relation to any matter of importance to you to see if questions have been added and/or positions have been altered.

The present FAQs are to be read in conjunction with the questions and answers ESMA has published with respect to the application of the laws and regulations governing UCITS. These questions and answers, which will also be updated from time to time, are available on the following website: http://www.esma.europa.eu/page/Investment-management-0

Please note that the FAQs on alternative investment fund managers are addressed in specific FAQs.

I. Definitions:

AIF:	An AIF is any collective investment vehicle, including investment compartments thereof, which in accordance with the definition under Article 1(39) of the Law of 2013 in case of Luxembourg AIFs respectively under Article 4(1)(a) of the AIFMD in case of AIFs established in another EU Member State or in a third country (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) does not require authorisation pursuant to Article 2(1) of the Law of 2010, respectively Article 5 of the UCITS Directive). For Luxembourg entities, AIFs are: • Investment funds subject to Part II of the Law of 2010; • Specialised investment funds established under the Law of 2007 if they fulfil the criteria under Article 1(39) of the Law of 2013; • SICARs established under the Law of 2004 if they fulfil the criteria under Article 1(39) of the Law of 2013 • Any entity not regulated under the Law of 2010, the Law of 2007 or the Law of 2004 that also meets the criteria of Article 1(39) of the Law of 2013 (Please refer to question 1 in FAQs on AIFMs)
AIFM:	An AIFM means any legal person whose regular business is managing one or more AIF(s) in accordance with the definition under Article 1(46) of the Law of 2013. (Please refer to question 1 in FAQs on AIFMs)
Audit Directive:	Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts
CESR:	Committee of European Securities Regulators
CESR guidelines:	CESR guidelines concerning eligible assets for investment by UCITS, March 2007 (updated September 2008), Ref.: CESR/07-044b
Chapter 15 ManCo(s):	Management companies authorized under Chapter 15 of the Law of 2010.
Comission Regulation No 583/2010:	Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website
Circular CSSF 08/380:	Circular CSSF 08/380 regarding the guidelines of the Committee of European Securities Regulators (CESR) concerning eligible assets for investment by UCITS
Circular CSSF 11/512:	Circular CSSF 11/512 on risk management rules
Circular CSSF 12/540	Circular CSSF 12/540 relating to non-launched compartments, compartments awaiting reactivation and compartments in liquidation
Circular CSSF 12/546	Circular CSSF 12/546 relating to the authorisation and organisation of the Luxembourg management companies subject to Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment as well as to investment companies which have not designated a management company

	within the meaning of Article 27 of the Law of 17 December 2010 relating to undertakings for collective investment
Circular CSSF 14/592:	Circular CSSF 14/592 on guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues
CSSF Regulation N° 10-05:	CSSF Regulation N°10-05 transposing Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure
Depositary:	Any entity legally appointed as depositary of a UCITS established in Luxembourg in accordance with the Law of 2010.
Dualistic entity:	A Luxembourg commercial company governed by a management board and a supervisory board as per the provisions of articles 60bis-1 and following of the Law of 1915.
EEA:	European Economic Area
ESMA:	European Securities and Markets Authority
ESMA ETFs guidelines:	ESMA guidelines on ETFs and other UCITS issues (last version ESMA/2014/937EN)
ESMA Opinion:	ESMA's opinion of 30 January 2017 on share classes of UCITS (ESMA34-43-296)
ESMA opinion 2012/721:	ESMA's opinion of 20 November 2012 on article 50(2)(a) of Directive 2009/65/EC (ESMA 2012/721)
ESMA ETFs FAQ:	Questions and Answers on ESMA's guidelines on ETFs and other UCITS issues (last version ESMA/2015/12)
ETF:	Exchange Traded Funds
EU:	European Union
Group link:	A situation in which two or more undertakings or entities belong to the same group within the meaning of Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council or international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council.
IFM	Investment Fund Manager as defined within Circular CSSF 18/698, as applicable
IML 91/75:	Circular IML 91/75 relating to the revision and remodelling of the rules to which Luxembourg undertakings governed by the law of 30 March 1988 on undertakings for collective investment ("UCI") are subject
Independent:	For the purposes of section 5 of the present Q&A, the term "independent" shall be construed in the sense of article 24, paragraph 2 of the UCITS V Delegated Regulation.
KIID:	Key Investor Information Document

Law of 1915:	The Luxembourg law of 10 August 1915 on commercial companies.
Law of 2004:	Law of 15 June 2004 relating to the Investment company in risk capital ("SICARs")
Law of 2007:	Law of 13 February 2007 relating to specialised investment funds ("SIFs")
Law of 2010:	Law of 17 December 2010 relating to undertakings for collective investment
Law of 2013:	Law of 12 July 2013 on alternative investment fund managers
MiFID:	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments and Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
Monistic entity:	A Luxembourg commercial company that is governed by either a board of directors (for a Luxembourg commercial company set up under the form of a *société anonyme*, hereafter an S.A.) or a board of managers (for a Luxembourg commercial company set up under the form of a *société à responsabilité limitée*, hereafter an S.à r.l.).
NAV:	Net Asset Value
OECD:	Organisation for Economic Co-operation and Development
OTC:	Over-the-counter
Other UCI:	AIFs, non-AIFs other than UCITS and third-country UCIs equivalent to UCITS For Luxembourg entities, non-AIFs other than UCITS are: • Specialised investment funds established under the Law of 2007 if they do not fulfil the criteria under Article 1(39) of the Law of 2013; • SICARs established under the Law of 2004 if they do not fulfil the criteria under Article 1(39) of the Law of 2013 • Any entity not regulated under the Law of 2010, the Law of 2007 or the Law of 2004 that does not meet the criteria of Article 1(39) of the Law of 2013
PIE Regulation:	Regulation No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public interest entities
PRIIPs KID:	Key investor document for packaged retail and insurance-based investment products
PRIIPs Regulation:	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
Regulation 2008:	Grand-ducal regulation of 8 February 2008 relating to certain definitions of the amended law of 20 December 2002 on undertakings for collective investment and implementing Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective

	investment in transferable securities (UCITS) as regards the clarification of certain definitions
Self-managed SICAV:	An investment company which has not designated a management company within the meaning of Article 27 of the Law of 2010 relating to undertakings for collective investment.
SICAV:	An investment company with variable capital under the Law of 2010.
SICAR:	Investment companies in risk capital governed by the Law of 2004
SIF:	Specialised investment funds governed by the Law of 2007
UCI:	Undertakings for collective investment (UCITS and other UCI)
UCITS:	Undertaking for collective investment in transferable securities subject to Part I of the Law of 2010 and EU non-Luxembourg UCITS falling under the scope of the UCITS Directive
UCITS Directive:	Directive 2009/65/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 as regards depositary functions, remuneration policies and sanctions
UCITS V Delegated Regulation:	Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries.

II. Questions and answers:

1. Eligible assets

Please note that this section only refers to the eligibility of assets and not to the diversification rules that apply to investments made in eligible assets. In addition to eligibility rules, eligible assets must in any case comply with relevant provisions on diversification rules.

1.1) What are the applicable provisions with regard to eligible assets for investment by UCITS?

Date of publication: 8 December 2015

The following provisions are applicable to eligible assets:

- Chapter 5 of the Law of 2010,
- Regulation 2008,
- CESR guidelines,
- ESMA opinion 2012/71,
- ESMA ETFs guidelines,
- ESMA ETFs FAQ.

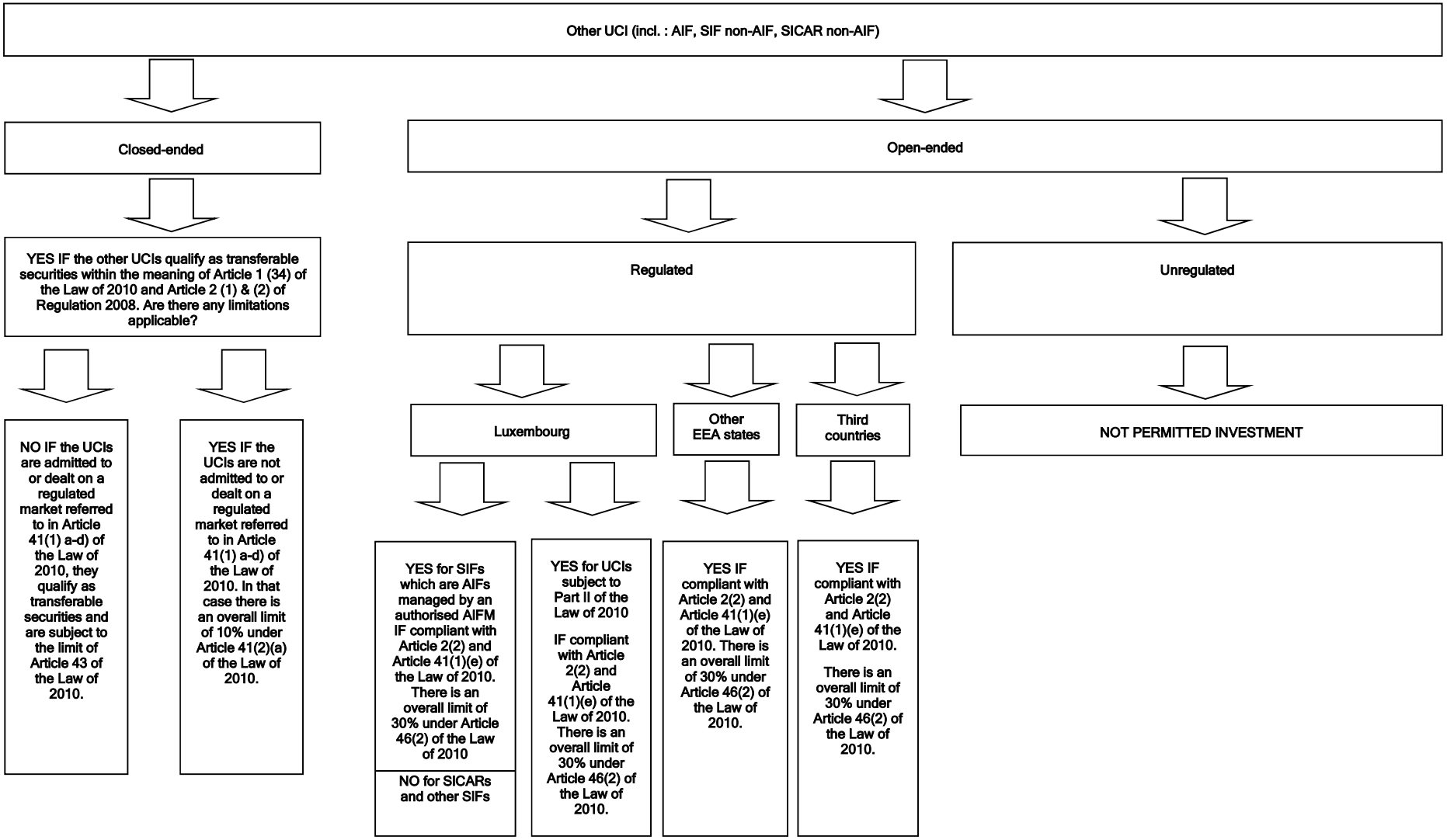
1.2) Under what conditions are UCITS eligible investment for a UCITS?

Date of publication: 8 December 2015

UCITS are eligible investment for a UCITS if such UCITS do not invest more than 10% in aggregate of their net assets in units of UCI as foreseen under Article 41(1)(e), 4th indent, of the Law of 2010.

1.3) UCITS may invest under certain conditions in other UCI. What are the steps to be considered in order to determine if the investment in the other UCI is eligible? What eligibility rules apply, if any?

Date of publication: 24 August 2016



1.4) [Deleted]

5 January 2018

1.5) Are UCITS master funds eligible investments for a UCITS which is not a feeder fund?

Date of publication: 8 December 2015

Yes, if such UCITS master funds fulfil all the criteria of Article 41(1)(e) of the Law of 2010.

1.6) Which are the analyses to be conducted to determine the eligibility of transferable securities linked to the performance of other underlying assets (structured financial instruments) within the investment policy of a UCITS?

Date of publication: 8 December 2015

The analysis of the eligibility of structured financial instruments covers several points.

In order to be eligible in terms of Article 41(1)(a) to (d) of the Law of 2010 and to qualify as transferable securities, the securities in question shall first comply with the legal provisions set down in Article 2 of Regulation 2008, completed by point 17 of the CESR guidelines which are attached to Circular CSSF 08/380.

In addition it should be assessed whether these transferable securities contain an embedded derivative within the meaning of Articles 2(3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

Two scenarios are possible:

I. Transferable securities embedding a derivative within the meaning of Articles 2(3) and 10 of Regulation 2008 and of point 23 of the CESR guidelines, respectively.

In this case, the portfolio manager must apply the "look-through" principle and assess the eligibility of the underlying assets in relation to the provisions regarding financial derivative instruments under article 8 of Regulation 2008.

(A) If the assets underlying the derivative financial instruments qualify as eligible assets according to Article 41 (1) of the Law of 2010 and to Article 8 of Regulation 2008, then the transferable securities in question are eligible as investments of UCITS.

(B) If the assets underlying the derivative financial instruments do not qualify as eligible assets according to Article 41(1) of the Law of 2010 and to Article 8 of Regulation 2008, then the transferable securities in question are not eligible as investments of UCITS pursuant to Article 41(1)(a) to (d) of the Law of 2010.

Nevertheless, if the assets underlying the derivative financial instruments qualify as eligible assets according to Article 41(2)(a) of the Law of 2010, the transferable securities in question are eligible as investments of UCITS pursuant to Article 41(2) of the Law of 2010.

Where a transferable security contains an embedded derivative within the meaning of Articles 2(3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines, the requirements of Article 42 of the Law of 2010 shall apply to this derivative instrument.

II. Transferable securities which do not contain an embedded derivative within the meaning of Articles 2(3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

In principle, the portfolio manager does not need to apply the look-through principle nor assess the eligibility of the underlying assets in relation to the provisions relating to derivative financial instruments set out in Article 8 of Regulation 2008.

That said, a UCITS must always be managed in accordance with the principle of risk-spreading. It is therefore, for example, not acceptable for a UCITS to invest exclusively in different securities which are all linked to the performance of the same underlying asset.

As a consequence, the principle of risk-spreading applies to each transferable security as well as to its underlying assets, independently of whether the security contains or not an embedded instrument within the meaning of Articles 2(3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

It follows that the portfolio manager as well as the persons responsible for the UCITS shall possess the necessary means to comply with the principle of risk-spreading.

1.7) What kind of investments are eligible in the 10% limit of Article 41(2) of the Law ("trash ratio")?

Date of publication: 8 December 2015

Only investments in transferable securities and money market instruments other than those referred to in Articles 41(1)(a) to (d) and 41(1)(h) of the Law of 2010 are eligible in the trash ratio. As a consequence, no instruments other than transferable securities or money market instruments may be eligible under Article 41(2)(a) of the Law of 2010.

1.8) Are OTC bond markets in a non-Member State of the European Union eligible markets for a UCITS?

Date of publication: 8 December 2015

Yes, if such OTC bond markets are regulated, operate regularly and are recognised and open to the public according to Article 41(1)(c) of the Law of 2010.

In relation to several OTC bond markets such as, the US OTC Fixed Income Bond Market, the Hong Kong OTC Corporate Bond Market and the China Interbank Bond Market and the OTC bond market organised by the International Capital Market Association (ICMA), the CSSF confirms their eligibility according to Article 41(1)(c) of the Law of 2010.

It is worth recalling that the qualification of a given market as regulated market within the meaning of Article 41(1)(c) of the Law of 2010 is the responsibility of the UCITS.

1.9) What are the criteria a financial index must comply with in order to qualify as financial index within the meaning of Article 41(1)(g) of the Law of 2010?

Date of publication: 8 December 2015

In order to qualify as a financial index under Article 41(1)(g) of the Law of 2010, the following provisions are applicable:

- Article 9 of Regulation 2008,
- point 22 of the CESR guidelines,

- ESMA ETFs guidelines,
- ESMA ETFs FAQ.

UCITS are invited to fulfil the financial index eligibility table available on the website of the CSSF in order to provide the CSSF with an overview of the financial index and its use.

1.10) Are investment funds eligible for a UCITS master fund under Article 77(3) of the Law of 2010?

Date of publication: 24 August 2016

Yes, a UCITS master fund can invest in funds or be a fund of funds provided that its target funds are eligible under Article 41(1)(e) of the Law of 2010.

1.11) Under the conditions disclosed in FAQ 1.3), UCITS may invest in open and closed-ended funds. In this context, how to assess if a fund is open or closed-ended? What are the eligibility rules to be applied?

Date of publication: 24 August 2016

An open-ended fund is a fund with units which are, at the request of holders, repurchased, directly or indirectly, out of this undertaking's assets even if its constitutional documents provide for certain limitations on the exercise of such a right of redemption. A fund, the constitutional documents of which do not provide for the right to investors to request their redemptions qualifies as a closed-ended fund.

Investments made in open-ended non UCITS are subject to the global limit of 30% under Article 46(2) of the Law of 2010. In any case, a UCITS must assess risks linked to its investments made in open and closed-ended funds and, such risks must be adequately captured by its risk management process.

Please refer to FAQ 1.3) for eligibility rules applicable to open and closed-ended funds.

1.12) What are the conditions an institution has to fulfil to be an eligible counterparty in the context of OTC derivative transactions under article 41 (1) (g) of the Law of 2010 or in the context of efficient portfolio management techniques under article 42 (2) of the Law of 2010?

Date of publication: 24 August 2016

Counterparties to OTC derivative transactions or to efficient portfolio management techniques must be establishments:

- authorised by a financial authority,
- subject to prudential supervision,
- and either be located in the EEA or in a country belonging to the Group of ten or have at least an investment grade rating,
- specialised in such transactions.

If the counterparty does not fulfil any one of the three first criteria, a UCITS has to demonstrate that the prudential rules applicable to such counterparty are equivalent to those laid down in the EU law.

1.13) Do Loans constitute eligible investments for UCITS?

Date of publication: 7 August 2020

No.

Loans cannot be considered as assets as referred to in Article 41 (1) and (2) (a) of the Law of 2010 as they do not qualify as:

- money market instruments within the meaning of article 1 (23) of the Law of 2010 and Articles 3 and 4 of Regulation 2008, further clarified by the CESR guidelines;
- transferable securities within the meaning of Article 1 (34) of the Law of 2010 and Article 2 of the Regulation 2008, further clarified by the CESR guidelines.

UCITS that would be invested in Loans have to disinvest from those positions by 31 December 2020, taking into account the best interests of investors.

In addition, the prospectuses of those UCITS, offering the possibility to invest in Loans, have to be updated, by 31 March 2021 at the latest, in order to no longer provide for the possibility for such investments.

2. Diversification rules

2.1) Articles 43(3) and 45(1) of the Law of 2010 refer to investments in transferable securities or money market instruments issued or guaranteed by non EEA country. Does an official list of admitted third countries exist?

Date of publication: 24 August 2016

No, there is no official list. In the context of article 43 (3) of the Law of 2010, any country may be acceptable. With regard to article 45 (1) of the Law of 2010, in principle member states of the EEA, OECD, the G20, Singapore and Hong Kong are acceptable. For the other countries, a case-by-case analysis must be conducted by the UCITS and be subject to the approval of the CSSF.

In any case, a UCITS must assess the country risk of its investments made under Articles 43(3) and 45(1) of the Law of 2010 and such country risk must be adequately captured by its risk management process.

2.2) Pursuant to Article 49(1) of the Law of 2010, a UCITS may derogate from articles 43, 44, 45, and 46 for a period of 6 months following their date of authorisation. When does this period start?

Date of publication: 24 August 2016

The date of authorisation should be understood as the date when the UCITS is entered by the CSSF on a list. However, in practice, the date of authorisation of a UCITS may differ from its effective launching date. In that case, the derogation period starts from the date of the launch date of the UCITS provided that the latter date has been communicated to the CSSF. In addition, and in line with point 2 of Circular CSSF 12/540 the launch date must occur within eighteen months of the date of the authorisation of the UCITS.

2.3) What is the "principle of risk-spreading" applicable to the underlying assets of transferable securities that do not embed a derivative as specified under FAQ 1.6)?

Date of publication: 24 August 2016

A UCITS must always be managed in accordance with the principle of risk-spreading. UCITS must ensure that the underlying assets of transferable securities that do not embed a derivative comply with the principle of risk-spreading. It would therefore not be acceptable, if the portfolio of a UCITS would consist exclusively of different structured transferable securities not embedding a derivative, but where the structured transferable securities are all linked to the performance of the same underlying asset.

In this context, the application of a 20% limit of the net assets to each underlying asset of such transferable securities that do not contain an embedded derivative, has to be respected. This limit may be raised up to 35% for a single underlying asset.

3. Delegations to third parties

3.1) What are the conditions to comply with in case of a delegation by an UCITs of the investment management function?

Date of publication: 24 August 2016

UCITS may delegate the function of investment management according to the requirements of Article 110 of the Law of 2010. The investment manager:

- Must be authorised or registered and subject to prudential supervision.
- If located in a third country, the cooperation between the CSSF and the supervisory authority of the investment fund manager must be ensured.

Investment fund managers located in an EEA or an OECD country and subject to prudential supervision of an authority fulfil in principle the above criteria. Investment fund managers located in another country are in principle acceptable if the CSSF has signed with the relevant supervisory authority, a Memorandum of Understanding covering UCITS.

Finally, the conditions foreseen under point 7.2 of the Circular CSSF 12/546 must be met.

4. Public-interest entities

4.1.) What are public-interest entities ("PIE")?

Date of publication: 24 August 2016

According to Article 2 point 13 of the Audit Directive as amended by Directive 2014/56/EC of 16 April 2014, "public-interest entities" means:

(a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;
(b) credit institutions as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council, other than those referred to in Article 2 of that Directive;

(c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC; or
(d) entities designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees;

4.2) Under what conditions a UCITS has to be considered as a PIE?

Date of publication: 24 August 2016

Under the conditions that the units of a UCITS are admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of MiFID are PIEs.

4.3) What are the main implications for a UCITS considered as a PIE?

Date of publication: 24 August 2016

The Audit Directive and PIE Regulation have following implications for UCITS:

a) Mandatory audit firm rotation is requested after twenty years subject to a public tendering process for the statutory audit after a period of ten years (Article 17 of the PIE Regulation;

b) Provision of non-audit services are only allowed to the (Articles 4 and 5 of the PIE Regulation):

   (i) preparation of tax forms;

   (ii) identification of public subsidies and tax incentives;

   (iii) support regarding tax inspections by tax authorities;

   (iv) calculation of direct and indirect tax and deferred tax;

   (v) provision of tax advice;

   (vi) valuation services, including valuations performed in connection with actuarial services or litigation support services, provided that the following requirements are complied with :

      (a) they have no direct or have immaterial effect, separately or in the aggregate on the audited financial statements;

      (b) the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee;

      (c) the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor or the audit firm;

c) Audit report will be enlarged mainly with a description of the most significant assessed risks of material misstatement, including assessed risks of material misstatement due to fraud (Article 10 of the PIE Regulation).

However, by way of derogation, UCITS are not required to have an audit committee (point 6(b) of Article 41 of the Audit Directive).

5. Independence requirements set forth by Chapter 4 of the Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 (UCITS V)

5.1) To which entities are the independence requirements set forth under Chapter 4 of the UCITS V Delegated Regulation applicable?

Date of publication: 6 July 2017

For UCITS with a designated Chapter 15 ManCo:

The independence requirements are applicable between:

- the depositary and
- the Chapter 15 ManCo.

The independence requirements are assessed between the Chapter 15 ManCo and the depositary only.

For UCITS set-up as self-managed SICAVs:

The independence requirements are applicable between:

- the depositary and
- the self-managed SICAV.

5.2) Which corporate bodies of the entities listed under question 5.1 are affected by the independence requirements set forth under Chapter 4 of the UCITS V Delegated Regulation?

Date of publication: 6 July 2017

The independence requirements affect the "*management body*" (as clarified in the answer to question 5.3 below) and the "*body in charge of the supervisory functions*" (as clarified in the answer to question 5.4 below) when such body exists.

5.3) Which body has to be considered as the "management body" of an entity set up as a *société anonyme* (S.A.), a *société à responsabilité limitée* (S.à.r.l.) or a *société en commandite par actions* (S.C.A.) established in Luxembourg?

Date of publication: 6 July 2017

The "*management body*" is:

- for a S.A: the board of directors of a monisitic S.A. (*conseil d'administration*, *Verwaltungsrat*) or the management board (*directoire, Vorstand*) of a dualistic S.A.,
- for a S.àr.l.: the managers (*gérants, Geschäftsführer*) or the board of managers (*conseil de gérance*, *Geschäftsführung*)

- for a S.C.A.): the managers (*gérants, Geschäftsführer*) as appointed in accordance with article 107[1] of the law of 1915.

When the appointed member of the management body is a legal entity, the independence requirements as clarified in section 5 of the present Q&A shall be assessed at the level of the management body of such legal entity.

5.4) In case of a dualistic S.A. established in Luxembourg, who is the "body in charge of the supervisory functions"?

Date of publication: 6 July 2017

The "*body in charge of the supervisory functions*" is the supervisory board (*conseil de surveillance, Aufsichtsrat*) of a dualistic S.A. established in Luxembourg.

5.5) When the depositary of a UCITS is established as a Luxembourg branch of an entity having its registered office in another EU Member State (and has therefore no legal personality in Luxembourg), how are the independence requirements set forth under Chapter 4 of the UCITS V Delegated Regulations assessed between the depositary and the Chapter 15 ManCo (or the self-managed SICAV)?

Date of publication: 6 July 2017

In such case, the independence requirements are assessed at the level of the Chapter 15 ManCo (or the self-managed SICAV) established in Luxembourg with regard to the management body (and, as the case may be, its supervisory board) of the head office of the depositary and the employees of the depositary (both at the level of its head office and of the Luxembourg branch).

5.6) When the management company of a UCITS is established as a Luxembourg branch of a management company having its registered office in another EU Member State (and has therefore no legal personality in Luxembourg), how are the independence requirements set forth under Chapter 4 of the UCITS V Delegated Regulations assessed between the Luxembourg depositary and the management company?

Date of publication: 6 July 2017

In such case, the independence requirements are assessed at the level of the depositary established in Luxembourg with regard to the management body (and, as the case may be, its supervisory board) of the head office of the management company and the employees of the management company (both at the level of its head office and of the Luxembourg branch).

1 Article 107, first paragraph of the Law of 1915 notably states that *« Management of the company is carried out by one or more managers, who may but need not be unlimited members, designated in accordance with the articles. Where one or more managers are legal entities, they shall not be obliged to appoint a legal representative*".

5.7) When there is a group link between the Chapter 15 ManCo (or the self-managed SICAV) and the depositary, do the provisions of article 24 of the UCITS V Delegated Regulation apply in addition to the provisions of article 21 of the UCITS V Delegated Regulation?

Date of publication: 6 July 2017

Yes.

5.8) What are the implications of the provisions of articles 21 and 24 of the UCITS V Delegated Regulation on Luxembourg entities?

Date of publication: 6 July 2017

The implications can be summarised as follows:

- prohibition for the employees and the members of the management body of a Chapter 15 ManCo (or of a self-managed SICAV) to hold a position either as an employee or as a member of the management body of the depositary (article 21),
- prohibition for the employees and the members of the management body of the depositary to hold a position either as an employee or as a member of the management body of the Chapter 15 ManCo (or of a self-managed SICAV) (article 21),
- prohibition to have more than one third of the members of the supervisory board of a Chapter 15 ManCo (or of a self-managed SICAV) to hold a position either as a member of the management body, as a member of the supervisory board or as an employee of the depositary) (article 21),
- prohibition to have more than one third of the members of the supervisory board of a depositary to hold a position either as a member of the management body, as a member of the supervisory board or as an employee of the related Chapter 15 ManCo or self-managed SICAV), where such supervisory boards exist (article 21), and
- obligation to have a number of independent members (as clarified in the answer to question 9 below) inluded in the relevant management body (as clarified in the answer to question 3 above) or, when applicable, in the supervisory board, in case of a group link between the Chapter 15 ManCo (or the self-managed SICAV) and the depositary (article 24).

Please refer to the tables hereafter for a schematic overview of the impact of these provisions.

I. Summary table in case the Chapter 15 ManCo (or the self-managed SICAV) and the depositary are both monistic entities:

		Chapter 15 ManCo		
		Board of directors or Board of managers or Managers	Employees	Requirement if group link
Depositary	Board of directors or Board of managers or Managers	NO	NO	Minimum one third of independent members[2]
	Employees	NO	NO[1]	
	Requirement if group link	Minimum one third of independent members [2]		

1 Some exceptions may be granted on a case by case basis for employees who are not involved in any way in the business line "depositary bank".

2. Please refer to the answer to question 9 above for rounding details.

II. Summary table in case the Chapter 15 ManCo (or the self-managed SICAV) is a dualistic entity whereas the depositary is a monistic entity:

		Chapter 15 ManCo			
		Management Board	Supervisory Board	Employees	Requirement if group link
Depositary	Board of directors or Board of managers or Managers	NO	Maximum one third	NO	Minimum one third of independent members[2]
	Employees	NO		NO[1]	
	Requirement if group link		Minimum one third of independent members [2]		

1 Some exceptions may be granted on a case by case basis for employees who are not involved in any way in the business line "depositary bank".

2 Please refer to the answer to question 9 above for rounding details.

III. Summary table in case the Chapter 15 ManCo (or the self-managed SICAV) and the depositary are both dualistic entities:

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="4">Chapter 15 ManCo</td></tr>
<tr><td>Management Board</td><td>Supervisory Board</td><td>Employees</td><td>Requirement if group link</td></tr>
<tr><td rowspan="4">Depositary</td><td>Management Board</td><td>NO</td><td rowspan="3">Maximum one third</td><td>NO</td><td></td></tr>
<tr><td>Supervisory Board</td><td colspan="2"></td><td>Minimum one third of independent members[2]</td></tr>
<tr><td>Employees</td><td>NO</td><td>NO[1]</td><td></td></tr>
<tr><td>Requirement if group link</td><td></td><td>Minimum one third of independent members[2]</td><td></td><td></td></tr>
</table>

1 Some exceptions may be granted on a case by case basis for employees who are not involved in any way in the business line "depositary bank".

2. Please refer to the answer to question 9 above for rounding details.

IV. Summary table in case the Chapter 15 ManCo (or the self-managed SICAV) is a monistic entity whereas the depositary is a dualistic entity:

		Chapter 15 ManCo		
		Board of directors or Board of managers or Managers	Employees	Requirement if group link
Depositary	Management Board	NO	NO	
	Supervisory Board	Maximum one third		Minimum one third of independent members[2]
	Employees	NO	NO[1]	
	Requirement if group link	Minimum one third of independent members[2]		

1 *Some exceptions may be granted on a case by case basis for employees who are not involved in any way in the business line "depositary bank".*

2 *Please refer to the answer to question 9 above for rounding details.*

5.9) What is the minimum number of independent members which must be included in the relevant body in order to comply with the requirements of article 24 of the UCITS V Delegated Regulation?

Date of publication: 6 July 2017

The minimum number of independent members depend on the total number of members within the relevant body (either the management body as clarified in the answer to question 3 above or the supervisory board as clarified in the answer to question 4):

- bodies of three members or less in total must include a minimum of one independent member.
- bodies of four members in total must include a minimum of one independent member.
- bodies of five members in total must include a minimum of two independent members.
- bodies of six members or more in total must include a minimum of two independent members.¨

5.10) Do individuals previously involved with, or linked to, either the Chapter 15 ManCo, the self-managed SICAV, or the depositary (or any other undertaking within the group to which such entities belong) have to respect a cooling off period in order to be considered as an independent member in the sense of article 24 of the UCITS V Delegated Regulation?

Date of publication: 6 July 2017

Yes.

A cooling-off period of 12 months should be respected.

5.11) Following the entry into force of the UCITS V Delegated Regulation, are the provisions of CSSF Circular 12/546 still applicable, notably those relating to solid governance arrangements (section 4.1.) and those relating to the independence of the Chapter 15 ManCo from the depositary?

Date of publication: 6 July 2017

Yes.

6. Impact of the PRIIPs Regulation

6.1) Do manufacturers of Luxembourg UCITS need to draw up a PRIIPs KID?

Date of publication: 11 April 2019

Yes, manufacturers of Luxembourg UCITS need to have in place a PRIIPs KID as of 1 January 2020, or later if the period of exemption provided for in article 32(1) of the PRIIPs Regulation is extended to a later date. Until such date Luxembourg UCITS will be exempt from the obligations of the PRIIPs Regulation in conformity with article 32(1) of such Regulation.

For more details on the drawing up of PRIIPs KIDs, please refer to point 23 of the Frequently Asked Questions concerning the Luxembourg law of 12 July 2013 on alternative investment fund managers.

http://www.cssf.lu/fileadmin/files/AIFM/FAQ_AIFMD.pdf

7. ESMA Opinion on share classes of UCITS

I) Impact of ESMA Opinion on existing share classes and transitional provisions

7.1) To mitigate negative effects for investors in share classes which were established prior to the issuance of this Opinion and which do not comply with these principles, ESMA is of the view that these share classes should be allowed to continue to operate, subject to their closing for new investments by new and existing investors in accordance with the provisions of point 35 of the Opinion. In case a conversion (free of charge) of non-eligible share classes into other eligible share classes is requested by the UCITS, do the provisions of CSSF circular 14/591 concerning the protection of investors in case of a material change apply?

Date of publication: 6 July 2017

Yes.

7.2) According to the ESMA Opinion, new investors are only allowed to invest in "non-eligible" share-classes until 30 July 2017; existing investors of such share classes can do so until 30 July 2018. Are investors, who invest newly into these share classes until 30 July 2017, considered as existing investors afterwards and thus able to further invest into these share classes until 30 July 2018?

Date of publication: 6 July 2017

Yes. These investors will benefit from the transition period for additional investments until 30 July 2018.

II) High-level principle: Common investment objective

7.3) According to the ESMA Opinion "overlay share classes" with a derivatives-based hedging arrangement to mitigate ("hedge out") one or more of the risk factors of the common pool of assets are not permissible, with the exception of currency risk hedging. Are all "overlay share classes" that are derivatives-based, with the exception of derivatives-based currency risk hedging, still permissible with the entry into force of the ESMA Opinion on share classes?

Date of publication: 6 July 2017

No.

7.4) Are currency risk hedging arrangements which systematically hedge out part or all of the foreign currency exposure in the common pool of assets into the share class currency compatible with the principle of a common investment objective?

Date of publication: 6 July 2017

Yes, if they comply with all the requirements set forth in the ESMA Opinion.

III) High-level principle: Non-contagion

7.5) Does the ESMA Opinion allow a share class providing for a partial hedge (e.g. 50%) of currency risk?

Date of publication: 6 July 2017

Yes. In accordance with point 26. c. of the ESMA Opinion a portion of the net asset value of the share class can be hedged against currency risk.

7.6) In accordance with point 26. b. and c. of the ESMA Opinion the UCITS management company should, at the level of the share class with a derivative overlay, ensure that the over-hedged positions do not exceed 105% of the net asset value of the share class and that the under-hedged positions do not fall short of 95% of the portion of the net asset value of the share class which is to be hedged against currency risk. If the hedge ratios of 105% / 95% should be breached, do the provisions of CSSF circular 02/77 apply?

Date of publication: 6 July 2017

No. Following from the requirements of point 26. d. and e. of the ESMA Opinion, the CSSF expects UCITS management companies / investment companies to define and implement monitoring and control processes/procedures for ensuring compliance with the hedge ratios on an ongoing basis.

IV) High-level principle: Pre-determination

7.7) The ESMA Opinion requires (points 29 and 30) that all the features of a share class should be pre-determined before the share class is set up and that, in share classes with hedging arrangements, this pre-determination should also apply to the currency risk which is to be hedged out systematically. Do these requirements provide for any discretionary elements in the currency risk hedging strategy?

Date of publication: 6 July 2017

No. However, in accordance with the ESMA Opinion, the discretion as to the type of derivative instrument used to hedge the currency risk and the operational implementation are not limited by the pre-determination requirement.

V) High-level principle: Transparency

7.8) The ESMA Opinion in point 32 b. requires in regard to the share classes with contagion risk that the UCITS management company should provide a list of share classes in the form of readily available information which should be kept current. Can this requirement be addressed by means of a website publication?

Date of publication: 6 July 2017

Yes, if the prospectus includes a link to the relevant website of the Management Company / UCITS.

7.9) What information will have to be included in the prospectus about existing share classes with regard to the transparency requirements set forth in the ESMA Opinion?

Date of publication: 6 July 2017

The prospectus should, in accordance with the provisions of point 32 of the ESMA Opinion, provide the details of the types and main characteristics of the share classes such as, among others, fee structure, dividend policy, investor type, currency or currency risk hedging. However, it does not have to provide an exhaustive list of all individual share classes together with all their individual characteristics.

Additional information on share classes issued (such as e.g. list of all the share classes offered to investors or effectively launched classes) should be available to investors either on request and free of charge, or through a reference in the prospectus to an internet website, where such information can be found.

7.10) Will a notice informing existing investors about the update of the prospectus as a result of the ESMA opinion be required?

Date of publication: 6 July 2017

Yes, if the update of the prospectus includes changes to the rights / interests of the investors.

7.11) Should investors be informed about the closing of non-eligible share classes for new investments by 30 July 2017 and for additional investments by 30 July 2018?

Date of publication: 6 July 2017

Yes. Investors concerned should be informed in accordance with the provisions set forth in the prospectus.

8. Obligation of professional secrecy

8.1) What are the conditions to comply with in case of data transfer by a central administration or a depositary to another service provider?

Date of publication: 2 September 2019

In case of data transfer, a service provider ("SP") acting as central administration or depositary bank (a credit institution, an investment firm or a professional of the financial sector) must obtain consent from its clients, the undertakings for collective investment, through the Board of Directors ("BoD") of the SICAV or the IFM for common funds, for outsourcing the services in scope, the type of information transmitted in the context of the outsourcing and the country of establishment of the entities providing outsourced services, pursuant to article 41 (2a) of the Law of 5 April 1993 on the financial sector, as amended.

The BoD of the SICAV, respectively the IFM for common funds should inform and obtain consent from investors to the transfer of their personal and confidential data through the following means:

• Communication to existing investors (letter explaining the transfer of data with a possibility to object within a reasonable timeframe)

• Immediate change/modification of the subscription form in order to seek consent from future investors

• At the first occasion: modification of the prospectus (disclosing the necessary information regarding the data transfer)

Before outsourcing the services in scope, the SP should also obtain the commitment of the BoD of the SICAV, respectively the IFM for common funds, that investors have been informed of and consented to the transfer of their personal and confidential data.

Due to transparency and confidentiality requirements, the same conditions apply to UCI/IFM acting as central administration.

9. Disclosure of the performance fee, the investment manager's fee and the investment advisor's fee to investors of a UCITS?

9.1) How should a UCITS disclose performance fees to the investors and to whom are performance fees of a UCITS payable?

Date of publication: 10 March 2020

A performance fee (or performance-related fee) motivates an investment manager to outperform a benchmark or achieve some other performance objective. The investment manager is responsible and accountable for the investments of the UCITS and its related performance. Both the fee model and the investment manager as the recipient of such a performance fee must be disclosed in the prospectus. Should there exist a sharing arrangement of the performance fee with any investment advisor(s) contractually linked to the UCITS, the prospectus shall inform about this arrangement.

9.2) How should a UCITS specify and disclose the investment manager's fee and the investment advisor's fee, if any, in comparison with other fees paid out of the assets of the UCITS?

Date of publication: 10 March 2020

In light of point 6 of Schedule A of Annex I of the Law of 17 December 2010 on undertakings for collective investment ("the Law"), expenses or fees shall be disclosed in the prospectus. This disclosure should distinguish between those to be paid by the unit-holders, and those to be paid out of the assets of the UCITS. Where a service fee is directly paid out of the assets of the UCITS to the investment manager(s), and possibly to any investment advisor(s) contractually linked to the UCITS, the method of calculation or the rate of the fee to each recipient must be disclosed in the prospectus.

For the sake of transparency and to allow investors to make an informed judgement about the investment proposed, as required under Article 151 (1) of the Law, the investment manager's fee and/or the investment advisor's fee shall only pay for investment management, respectively investment advice. As a general rule, the investment advisor's fee is expected to be at a lower level than the investment manager's fee.

When other expenses or fees for activities beyond the direct scope of investment management or advice are payable out of the assets of the UCITS to the investment manager(s) or investment advisor(s), such expenses or fees must be disclosed separately from investment manager's fee respectively investment advisor's fee, in a way that clearly informs investors about the nature of such expenses or fees.

In cases where the option of an "all-in" fee is proposed, which implies that only one compensation amount is paid out of the assets of the UCITS to a recipient (commonly the management company) who will afterwards pay the other service providers to the UCITS, the prospectus must clearly state the scope and nature of such "all-in" fee. Ideally, each contractual recipient of this all-in fee should be specified. This provides clarity to investors concerning compensation, fees and expenses in order to allow comparison across UCITS and facilitate investment choice.

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