cssf

Commission de Surveillance
du Secteur Financier

Frequently Asked Questions:

The Law and the Grand-ducal Regulation of 11 January 2008 on transparency requirements for issuers as amended (the "Transparency Law" and the "Grand-Ducal Transparency Regulation")

(Version: 29 April 2020)

Commission de Surveillance du Secteur Financier

Frequently Asked Questions: The Law and the Grand-ducal Regulation of 11 January 2008 on transparency requirements for issuers as amended (the "Transparency Law" and the "Grand-Ducal Transparency Regulation")

TABLE OF CONTENTS

Commission de Surveillance du Secteur Financier

Glossary

Accounting Directive	Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings
ADR	American Depositary Receipt
ESEF Regulation	Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format
FCP	*Fonds commun de placement* – Common fund
GAAP	Generally accepted accounting principles
GDR	Global Depository Receipt
Grand-ducal Transparency Regulation	Grand-ducal Regulation of 11 January 2008 on transparency requirements for issuers of securities
IFRS	International Financial Reporting Standards
Law of 3 July 2012	Law of 3 July 2012 transposing Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010
Law on commercial companies	Law of 10 August 1915 on commercial companies
Law on takeover bids	Law of 19 May 2006 on takeover bids
Market Abuse Regulation	Regulation (EU) No 596/2014 of the European Parliament and of the Counsil of 16 April 2014 on market abuse
Member State	Member State of the European Union. The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union are considered as equivalent to Member States of the European Union, within the limits set forth by this agreement and related acts

OAM	Officially Appointed Mechanism
Periodic financial reports	Annual and half-yearly financial reports
Periodic information	Annual financial reports, half-yearly financial reports and reports on payments to governments
Prospectus Law	Law of 16 July 2019 on prospectuses for securities
Regulated market	A market within the meaning of Article 4(1)(21) of Directive 2014/65/UE of 15 May 2014 on markets in financial instruments
SICAV	Investment company with variable capital
Third country	A country other than that falling under the definition of Member State
Transparency Directive	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency 5 requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
Transparency Law	Law of 11 January 2008 on transparency requirements for issuers
UCI	Undertaking for Collective Investment
1990 Prospectus Regulation	Grand-ducal Regulation of 28 December 1990, as amended, on the conditions governing the drawing-up, scrutiny and distribution of the prospectus to be published where transferable securities are offered to the public or of listing particulars to be published for the admission of transferable securities to official stock exchange listing
4th Directive	Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies, as repealed. In accordance with Article 52 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated

	financial statements and related reports of certain types of undertakings, references to the repealed directive shall be construed as references to Directive 2013/34/EU and shall be read in accordance with the correlation table set out in Annex VII of that Directive.
7th Directive	Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts, as repealed. In accordance with Article 52 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, references to the repealed directive shall be construed as references to Directive 2013/34/EU and shall be read in accordance with the correlation table set out in Annex VII of that Directive

The terms defined in this glossary will be marked in italics throughout the document.

1. When do the new *periodic information* requirements apply to issuers newly subject to the *Transparency Law*?

- The *Transparency Law* regime for *periodic information* fully applies (i.e. with respect to the reports' content, the procedures and deadlines for publication, their availability at an *OAM* and filing with the CSSF) for a period starting on the first trading day or later.

- As for *periodic information* to be published on the first trading day or later and referring to periods that ended before that date, the CSSF considers that the provisions of the *Transparency Law* apply only with respect to procedures concerning publication, availability at an *OAM* and filing with the CSSF.
  As far as this *periodic information* is concerned, the CSSF thus considers that the content and publication deadlines need not necessarily comply with the provisions of the *Transparency Law* but, where applicable, with the provisions of the laws and regulations that applied before the issuer became subject to the *Transparency Law*.

- As regards *periodic information* referring to periods that started before the first trading day and ended after that date, the CSSF considers that the provisions of the *Transparency Law* apply only with respect to the procedures and deadlines concerning its publication, its availability at an *OAM* and filing with the CSSF.
  As far as this *periodic information* is concerned, the CSSF thus considers that the content need not necessarily comply with the provisions of the *Transparency Law* but, where applicable, with the provisions of the laws and regulations that applied before the issuer became subject to the *Transparency Law*.

  As the *periodic information* requirements mainly refer to financial statements, the CSSF points out that from the moment the issuer is required to comply with all the provisions of the *Transparency Law*, the issuer will be required to provide comparative figures of the preceding financial year. It is therefore recommended that issuers endeavour as soon as possible to comply with a maximum of the provisions regarding financial statements for the current financial year.

  It should be noted that the issuers referred to in Article 7(1) of the *Transparency Law* are exempt from the requirement to draw up *periodic financial reports*. Furthermore, issuers referred to in Article 7(2) and (3) are not required to draw up half-yearly financial reports.

  Finally, the details provided above apply without prejudice to the application of the requirement to publish reports on payments to governments, which only applies as from the financial years starting on 1 January 2016 or later.

2. Can an issuer voluntarily abide by all the requirements governing *periodic financial reports* (i.e. as regards the *periodic financial reports*' content, the procedures and deadlines for publication, their availability at an *OAM* and filing with the CSSF), even if the *periodic financial reports* concerned refer to closed financial years or current financial years?

Every issuer may choose to comply with all the requirements governing *periodic financial reports* set down in the *Transparency Law* and which go beyond the explanations given in question 1.

This is in particular interesting for issuers whose securities are admitted to trading on a *regulated market* situated or operating within another *Member State* and whose relevant competent authorities could require compliance of the *periodic financial reports* with the provisions of the *Transparency Directive*.

3. When do the ongoing information requirements apply to issuers newly subject to the *Transparency Law*?

The notion of ongoing information refers to (a) information concerning major holdings, (b) information for holders of securities admitted to trading on a *regulated market* referred to in Articles 16 and 17 of the *Transparency Law* and (c) inside information as defined in Article 7(1)(a) of the *Market Abuse Regulation*.

The obligations relating to these three types of information apply as from the first trading day.

a) As regards the notifications of major holdings, the *Transparency Law* regime entirely applies as from the first trading day of the shares on a *regulated market*. The holders of shares of the issuer concerned are also subject to this regime as from that date. Thus,

- the issuer of shares shall publish at the latest at the end of the first month following the admission of the shares to trading on a *regulated market* the total number of voting rights and capital in accordance with Article 14 of the *Transparency Law*;
- a shareholder that holds a proportion of voting rights which is equal to the minimum threshold of 5% or greater shall notify the percentage of voting rights and capital held in accordance with Articles 8, 9, 12 and 12a. The timeframe for the notification imposed by the *Transparency Law*, i.e. four trading days, shall apply as from the moment the shareholder is supposed to have knowledge of the total number of voting rights and capital. The shareholder is supposed to have knowledge thereof at the latest on the last day of the month during which the issuer disclosed the total number of voting rights in accordance with Article 14 of the *Transparency Law*;

– the issuer shall in turn disclose the information notified by the shareholder no later than three trading days upon receipt, in accordance with Article 11(6) of the *Transparency Law*.

Before the first publication to be made by the issuer referred to above, the shareholder that holds a proportion of voting rights which, following an acquisition or disposal, reaches, exceeds or falls below one of the thresholds set down by the *Transparency Law*, shall use as denominator figures concerning capital as last published by the issuer to calculate the percentage held.

b) As regards the information referred to in Articles 16 and 17, the issuer shall ensure to publish it as soon as possible and in any case prior to the events in question. As regards the information referred to in points (a) and (b) of those articles, it shall be published at the latest on the date of calling the first general meeting being held after the first trading day.

c) The requirements regarding inside information, as regards its publication, in particular its dissemination, storage on an *OAM* and filing with the CSSF, apply as from the first trading day.

4. Table summing up the different cases with respect to the choice of the home *Member State*

<table>
<tr><td></td><td colspan="3">Registered office</td></tr>
<tr><td></td><td>Luxembourg</td><td>Other Member State</td><td>Pays tiers</td></tr>
<tr><td>Issuers of shares</td><td rowspan="2">Luxembourg</td><td rowspan="2">Member State of the registered office</td><td rowspan="2">Choice**</td></tr>
<tr><td>Issuers of debt securities the denomination of which is less than EUR 1,000*</td></tr>
<tr><td>All other issuers</td><td colspan="3">Member State chosen by the issuer from among the Member State in which the issuer has its registered office and, where applicable, one of the Member States which has admitted its securities to trading on a regulated market. ***</td></tr>
</table>

* or the equivalent of EUR 1,000 at the date of issue if denominated in a currency other than EUR;

** the *Member State* chosen by the issuer from amongst the *Member States* where its securities are admitted to trading on a *regulated market*. The choice of a home *Member State* shall remain valid unless the issuer has chosen a new home

Member State under letter (c) of Article 1(1)(9) of the *Transparency Law* and has disclosed the choice in accordance with the second indent of point (9)[1].

*** the issuer may choose only one *Member State* as its home *Member State*. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any *regulated market* in the European Union or unless the issuer concerned becomes subject to letters (a) or (c) of Article 1(1)(9) of the *Transparency Law* during this three-year period.

For an issuer whose securities are no longer admitted to trading on a *regulated market* in its home *Member State* as defined by point ** or point ***, but instead are admitted to trading in one or more *Member States*, the issuer may choose a new home *Member State* amongst the *Member States* where its securities are admitted to trading on a *regulated market* and, where applicable, the *Member State* where the issuer has its registered office.

An issuer shall disclose its home *Member State* as referred to in letters (a), (b) or (c) of Article 1(1)(9) of the *Transparency Law* in accordance with Articles 19 and 20 of the *Transparency Law*. An issuer shall also disclose its home *Member State* to the competent authority of the *Member State* where it has its registered office, where applicable, to the competent authority of the home *Member State* and to the competent authorities of all host *Member State*s.

In the absence of disclosure by the issuer of its home *Member State* as defined by the second indent of letter (a) or letter (b) of Article 1(1)(9) of the *Transparency Law* within a period of three months from the date the issuer's securities are first admitted to trading on a *regulated market*, the home *Member State* shall be the *Member State* where the issuer's securities are admitted to trading on a *regulated market*. Where the issuer's securities are admitted to trading on *regulated markets* situated or operating within more than one *Member State*, those *Member States* shall be as the issuer's home *Member States* until a subsequent choice of a single home *Member State* has been made and disclosed by the issuer.

5. What is the definition of a closed-end *UCI* under the *Transparency Law*?

The definition of a closed-end *UCI* under the *Transparency Law* is the same as in the *Prospectus Law*. A UCI is considered to be of the closed-end type in this context if the investor has no repurchase right. This definition is specific to the prospectus regulations and to the requirements laid down in the *Transparency Law*, and does not prejudice the definition given under the *UCI* regulations.
When a *UCI* decides, in the course of its life, to open the fund (closed under the terms of the *Transparency Law*) and to allow the repurchase of the securities, the

[1] *It should be noted that in that case, the validity of the choice is not limited to three years.*

CSSF could in principle, for the purpose of the *Transparency Law*, (re)consider it as an open *UCI*.

6. Does the obligation to make the financial reports available to the public for at least ten years also apply to the reports published before the entry into force of the *Transparency Law*?

No. The obligation to make the financial reports available to the public for at least ten years[2] only applies to the reports published after the entry into force of the *Transparency Law*, i.e. after 19 January 2008.

7. Is the preparation of quarterly information mandatory?

The publication of quarterly information by issuers is no longer required under the new provisions of the *Transparency Directive* as from 27 November 2015.

However, the CSSF considers that quarterly information that has been made available to the public by an issuer based on its own initiative or in order to comply with another legal or regulatory requirement, in principle constitutes inside information, given the nature of the information included and notably if there are important figures or other still undisclosed important information. As a consequence, such quarterly information shall be disclosed according to the provisions of the *Transparency Law*, i.e. disseminated in an effective way, stored on the *OAM* and filed with the CSSF.

8. Specifications regarding the notion of "total number of voting rights and capital" referred to in Article 14 of the *Transparency Law* and the moment at which the share issuer must publish this total

By virtue of Article 14 of the *Transparency Law*, issuers whose home *Member State* is Luxembourg shall calculate the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number occurred and shall publish the results thereof. The publication shall be made as soon as possible, but not later than on the last day of the month in which the change occurred. It should be noted that this publication shall clearly indicate that it has been made in accordance with Article 14 of the *Transparency Law*.

[2] *The ten-year limit shall apply to financial reports published as from 15 May 2016. For financial reports published before 15 May 2016, this limit shall be at least five years.*

The notion of "total number of voting rights" refers to the total number of voting rights attached to the shares composing the share capital of the notifying issuer, including the suspended voting rights.

The notion thus also includes the voting rights attached to own shares held by the issuer and whose voting right is suspended. Without prejudice to Article 13 of the *Transparency Law*, the issuer is not required to differentiate between own shares and other shares for the disclosure of the total number of voting rights and capital.

The voting right which is attached to shares representing capital without voting rights of a Luxembourg company in the context of specific decisions set out in Article 46(1) of the *Law on commercial companies* shall not be included in the total number of voting rights, without prejudice to the obligation of the issuer to take them into account when providing information referred to in Article 16(2)(a) of the *Transparency Law* where resolutions concerning the points referred to in Article 46(1) of the *Law on commercial companies* are on the agenda of the general meeting.

As soon as holders of shares without voting rights recover, under the circumstances described in Article 46(2) of the *Law on commercial companies*, the same voting right as holders of ordinary shares, that voting right must be included in the total number of voting rights (as long as the voting right of preference shares without voting rights continues).

"Total capital" is the total number of shares composing the share capital of the notifying issuer.

For further information on the timeframes for notification of the issuer of shares following the disclosure of the total voting rights and capital, please refer to question 51.

9. Which denominator shall be used by the shareholder to calculate the percentage of its voting rights?

In order to comply with the requirements laid down in Article 8 of the *Transparency Law*, the shareholder shall use as denominator the total number of voting rights as last disclosed by the relevant issuer. As regards the numerator, it shall apply the same principles as the issuer applies to calculate the total voting rights (cf. question 8).

10. What are the issuers' obligations with respect to the dissemination of regulated information and what information must be provided to the CSSF to this end?

Firstly, a distinction must be made between disseminating and storing regulated information:

- Dissemination involves the active distribution of regulated information with a view to reaching the widest possible public in a manner ensuring fast access to such information on a non-discriminatory basis. To this end, the issuer uses itself, or entrusts a third person with using, on its behalf, such media as may reasonable be relied upon for the effective dissemination of regulated information to the public in all *Member States*.
- Storage of regulated information (i.e. making the information available on the *OAM* operated by the Bourse de Luxembourg) allows that such information remains available to the public for at least ten years following its dissemination.

In this context, it should be noted that the simple publication on a website or availability at an *OAM* is not considered as a form of dissemination of regulated information as required by the *Transparency Law* and the Grand-ducal Transparency Regulation. Indeed, making the regulated information available is not sufficient: the dissemination must involve an active distribution of information to the different media as listed below (non-exhaustive list). Moreover, in accordance with Article 13 of the Grand-ducal Transparency Regulation, the issuer must disseminate its regulated information with a view to reaching the widest possible public, and as close to simultaneously as possible in Luxembourg and in the other *Member States*.

Without prejudice to the requirements relating to the publication of inside information on the website, the CSSF notably considers that an issuer complies with its obligations relating to effective dissemination when it transmits regulated information either itself or through a company specialised in this field[3]:

- to one or several press agencies specialised in financial information and/or to one or several widely circulated newspapers allowing to reach the investors concerned; and
- to the *regulated market(s)* on which the issuer's securities are admitted to trading.

In light of the above, the operator of a *regulated market* that disseminates the regulated information it receives to press agencies and/or newspapers as referred to in the first indent, may be considered as a company specialised in this field.

[3] The CSSF publishes on its website a list of companies that contacted the CSSF and indicated dissemination channels that comply with the above criteria and fulfil Article 13(2) of the Grand-ducal Transparency Regulation. However, issuers that use those companies must ensure themselves that the criteria laid down in Article 13(3) to 13(5) of the Grand-ducal Transparency Regulation are fulfilled. The list is not exhaustive and does not preclude that other entities that are not registered on this list could also fulfil those criteria or that the issuer could meet them itself.

Issuers may also use the entities authorised by other European competent authorities for the purpose of disseminating regulated information if those entities fulfil criteria that are equivalent to those set out above.

Besides addressing a company specialised in this field, the issuer is invited to directly use the written press if it considers that this is necessary to reach a significant part of its investors. Moreover, the issuer will assess whether it is useful to enable its shareholders (or any other interested person) to register with the issuer with a view to obtaining any relevant information. When choosing the media, the issuer shall take into account the nature of the regulated information and the profile of the current and potential investors in the securities to which the regulated information refers. In order to simplify public access to information, the issuer should ensure a certain consistency in the choice of the media used for the dissemination of its regulated information.

When communicating information to the media the following requirements must be met by the issuer or by a third person empowered by the issuer in accordance with Article 13 of the Grandducal Transparency Regulation:

- regulated information shall be communicated to the media in unedited full text. However, in the case of *periodic information*, this requirement shall be deemed fulfilled 12 if the announcement relating to the *periodic information* is communicated to the media[4] and indicates on which website the relevant documents are available. Information provided as addition to the regulated information must not necessarily be published in unedited full text;
- regulated information shall be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the regulated information;
- regulated information shall be communicated to the media in a way which makes clear that the information is regulated information and identifies clearly the issuer concerned. The subject matter of the regulated information must be clearly stated. The communication methods used must allow to trace the time and date of the communication of the regulated information by the issuer.

It should be borne in mind that the regulated information must be filed with the CSSF. In accordance with point 5.a. of Circular CSSF 08/337, the issuer shall state, for every filing of regulated information, the arrangements and the date of dissemination of that information. Moreover, upon request, the issuer shall communicate the following to the CSSF:

[4] This is only valid for the dissemination. Regulated information, including periodic information, shall always be stored on the OAM in its entirety.

- the name of the person who communicated the information to the media;
- the security validation details;
- the time and date on which the information was communicated to the media;
- the medium in which the information was communicated;
- if applicable, details of any embargo placed by the issuer on the regulated information.

In the light of Articles 18 and 20 of the *Transparency Law*, the CSSF considers that the filing with the CSSF, the storage on the *OAM* and the efficient dissemination must, in principle, be carried out simultaneously.

11. Details regarding the general language regime

For the purposes of Article 19(1) to (4) of the *Transparency Law*, the languages accepted by the CSSF are Luxembourgish, French, German and English.

For the purposes of Article 19(1) to (4) and (7) of the *Transparency Law*, the CSSF always accepts English as a customary language in the sphere of international finance.

- The following situations may thus arise:
- Issuers whose securities are admitted to trading solely on a Luxembourg *regulated market* and whose home *Member State* is Luxembourg may publish their regulated information in one of the languages accepted by the CSSF, i.e. either in Luxembourgish, French, German or English.
- Issuers whose home *Member State* is Luxembourg and whose securities are admitted to trading on a Luxembourg *regulated market* and on one or more *regulated markets* publish their regulated information in one of the languages accepted by the CSSF. They shall also publish the information either in a language accepted by the competent authorities of the host *Member States* concerned, or in a language customary in the sphere of international finance.
- For instance, a German issuer whose home *Member State* is Luxembourg and whose securities are admitted to trading on *regulated markets* in Germany, Austria and Luxembourg fulfils its obligations with respect to the language regime if it publishes its regulated information in German[5]. If its securities are also admitted to trading on a French *regulated market*, it may choose to

[5] *Please note that this is only applicable if such publication fulfils the language regimes of the relevant host Member States.*

publish its regulated information in German and in French[6]. English being a language recognised by the CSSF as a language customary in the sphere of international finance, the sole publication in English will be sufficient in any of these situations.

- Issuers whose home *Member State* is Luxembourg and whose securities are admitted to trading on one or more *regulated markets* but not in Luxembourg shall publish their regulated information either in a language accepted by the competent authorities of the host *Member States* concerned, or in a language customary in the sphere of international finance. If the language chosen for the purpose of the publication is not one of the languages accepted by the CSSF, they shall publish the information in one of those languages as well.

For instance, an issuer whose securities are admitted to trading on *regulated markets* in Germany and Austria may publish its regulated information in German[7]. This issuer may also choose to publish its information in English.

- Issuers whose securities are admitted to trading on a Luxembourg *regulated market* but whose home *Member State* is not Luxembourg shall publish their regulated information either in a language accepted by the CSSF, or in a language customary in the sphere of international finance. Moreover, they shall publish the information pursuant to the language provisions of the home *Member State* and of any other possible host *Member States*. In order to fulfil their obligations towards Luxembourg as host *Member State*, they shall thus publish the regulated information either in Luxembourgish, French, German or English.

It should be noted that, without prejudice to the second subparagraph of Article 19(8) of the *Transparency Law*, regulated information relating to securities whose denomination per unit is equal to or exceeds EUR 100,000 (or the equivalent of EUR 100,000 if denominated in a currency other than Euro at the date of the issue) shall be disclosed, at the choice of the issuer

- in a language accepted by the competent authorities of the home and host *Member States*, or
- in a language customary in the sphere of international finance.

12. Specifications regarding the temporal scope of the language regime

Article 2 of the *Transparency Law* sets down requirements in relation to the disclosure of periodic and ongoing information about issuers of securities from the

[6] *Idem footnote 4.*

[7] *Idem footnote 4.*

moment those securities are admitted to trading on a *regulated market* situated or operating within a *Member State*.

Consequently, an issuer whose home *Member State* is Luxembourg is not obliged to translate the documents it published before those securities were admitted to trading on a *regulated market*. However, the documents, notably the *periodic financial reports*, which refer to the periods closed before the admission to trading but whose publication is only made after that date, must be published, stored and filed with the CSSF in accordance with the provisions of the *Transparency Law*, and, where applicable, translated into one of the languages accepted by the CSSF.

It should be borne in mind that regulated information is the sole information concerned by the language regime of the *Transparency Law*.

13. What are the obligations of the issuer whose securities have been admitted, without its consent, to trading on a *regulated market* situated or operating within a *Member State*?

The obligation for the issuer to draw up, publish and file regulated information with the CSSF and to make it available to the *OAM* only applies to the issuer for admissions to trading on a *regulated market* requested by the issuer itself or with its consent. Any possible obligations to translate regulated information which would result from additional admissions to other *regulated markets* that have been requested by third persons without the issuer's consent, do not fall on the issuer but on the third person concerned.

Where the admission to a *regulated market* that has been requested by a third person is the only admission to a *regulated market* of the issuer concerned, the CSSF considers that it is for the third person that requested the admission to implement the necessary means in order to ensure compliance with the provisions of the *Transparency Law*.

14. Does an issuer whose securities are no longer admitted to trading on a *regulated market* situated or operating in a *Member State* continue to be subject to the obligations with respect to *periodic information* relating to the periods running at the time of the withdrawal or ending at a date close to the withdrawal of its securities?

No. The CSSF considers that an issuer that does not have any securities admitted to trading on a *regulated market* any more at the moment at which it should have filed its relevant regulated information is no longer subject to the obligations with respect to the disclosure, storage on the *OAM* and filing with the CSSF of that information. Thus, an issuer whose financial year coincides with the calendar year and which withdraws all its securities that fall under the scope of the *Transparency Law* from the *regulated market* on 10 July of the current year, is not required to

comply with the provisions of the *Transparency Law* with respect to half-yearly reports for that year.

15. Which exchange rate applies with respect to the thresholds allowing to determine the home *Member State* and to assess whether an issuer may benefit from the exemption under Article 7(1)(b) of the *Transparency Law*?

For securities whose nominal value is denominated in a currency other than Euro, the equivalence to the amounts of EUR 1,000 and EUR 50,000 or EUR 100,000, respectively, in 15 accordance with Article 1(1)(9) and Article 7(1) and (4) is determined by applying the exchange rate at the date of the issue of the securities concerned.

16. Is the issuer, which prepares *periodic financial reports* on a consolidated basis without being obliged to do so, required to prepare an individual half-yearly report in addition to a consolidated half-yearly report?

No. Contrary to the provisions regarding annual accounts laid down in Article 3(3) of the *Transparency Law*, Article 4(3) does not oblige the issuer to prepare individual half-yearly accounts in addition to consolidated half-yearly accounts. An issuer that chooses voluntarily to comply, as parent undertaking, with a more stringent requirement arising from the preparation of consolidated half-yearly accounts is thus not required to draw up individual half-yearly accounts. As a matter of fact, the second subparagraph of Article 4(3) imposes a minimum content of the half-yearly reports on issuers. However, nothing prevents issuers from providing spontaneously more comprehensive information.

17. Does the issuer have to publish every notification with respect to major holdings it receives, even if it is false or incomplete?

If the issuer receives a notification under Articles 8, 9, 12 or 12a of the *Transparency Law* and if it is obvious that the latter is false or incomplete, notably owing to the fact that the content does not allow to establish the percentage of the holding, the identity of the holder or of the filing person, the issuer requests the author of the notification to rectify the content of the notification or to provide the missing information. The time limit of three trading days referred to in Article 11(6) of the *Transparency Law* thus starts to run from the moment the issuer has all the information it needs to disclose the content of the notification received. If, however, the issuer considers the information as price sensitive or if the issuer considers that the notification includes information that is comprehensive enough

to be made public, it should nevertheless publish the notification. Where it receives additional information it deems useful at a later stage, it shall make another publication.

18. Specifications regarding the statements referred to in Articles 3(2)(c) and 4(2)(c) of the *Transparency Law*

The persons responsible referred to in Articles 3(2)(c) and 4(2)(c) of the *Transparency Law* must be senior executives having the necessary capacity and knowledge to pronounce on the financial statements. The persons referred to could be, for instance, the chairman of the board, the managing director, the CEO or another member of the management, etc.

The statement of the persons responsible must cover the statutory and consolidated accounts. Issuers which publish statutory accounts separate from the consolidated accounts (published in the annual report), shall make:

- either two statements; or

- one statement that covers the statutory and the consolidated accounts.

A physical signature of the persons responsible is not required under the *Transparency Law*. Nevertheless, the persons must be clearly identified by their names and functions.

19. Do the voting rights that can be acquired through the exercise or the conversion of a specific type of financial instrument, as referred to in Article 12, have to be added to the voting rights attached to the existing shares?

Yes. When calculating the percentage triggering the notification obligation, the voting rights attached to shares that can potentially be acquired by virtue of a specific financial instrument as referred to in Article 12 of the *Transparency Law* are added to the voting rights attached to the shares of that issuer already held by a person in accordance with Article 8 or 9 (Article 12a(1)). As a reminder, the notification requirement is also triggered when a threshold is exceeded in the cases referred to in Articles 8, 9 or 12 individually.

Moreover, it should be noted that the voting rights attached to specific instruments that have already been notified must be notified again where the underlying shares have been acquired and where this acquisition would result in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the above-mentioned thresholds (Article 12a(2) of the *Transparency Law*).

20. Do the financial statements, as included in the annual financial report referred to in Article 3 of the *Transparency Law*, have to be approved by the ordinary general meeting before their disclosure, filing with the CSSF and availability at an *OAM*?

In general, it should be noted that questions relating to corporate law are governed by the *Member States'* national laws. As regards Luxembourg companies, Article 74 of the *Law on commercial companies* provides that the general meeting discusses and approves the annual accounts. Article 75 of that law requires that the annual accounts be published within one month of their approval.

The *Transparency Law* however only requires that the financial statements be audited. Thus, the financial statements must be prepared by the Board of directors and reviewed by an auditor. Without prejudice to the requirement laid down in the first subparagraph, the financial statements as included in the annual financial report to be published, in accordance with the *Transparency Law*, within four months at the latest after the end of every financial year must not necessarily be approved by a general meeting beforehand. In this context, the issuer shall pay particular attention to its requirement to publicly disclose inside information where it discloses information before a general meeting takes place (cf. question 49), with, in particular, financial reports that have not yet been approved by this general meeting. Should a general meeting decide not to approve the financial statements presented to it, the issuer is required to inform the public thereof and to make a new disclosure after the drawing-up and audit of the new version of the financial statements.

21. What are the major related parties' transactions that the issuer of shares must notify in accordance with Article 4(4) of the *Transparency Law*?

In accordance with Article 4(4) of the *Transparency Law*, for issuers of shares the management report included in the half-yearly financial report sets out the major related parties' transactions. Paragraph 1 of Article 5 of the Grand-ducal Transparency Regulation provides that the following elements must be set out:

- the related parties' transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or the performance of the undertaking during that period;
- any changes in the related parties' transactions described in the last annual report that could have a material effect on the financial position or performance of the undertaking in the first six months of the current financial year.

Moreover, the second paragraph sets out that even if the issuer concerned is not obliged to draw up consolidated accounts, at least the related parties' transactions set out in Article 43(1), 7b of the *4th Directive* must be published.

It should be noted that the term "related party" in this context bears the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

22. What are the procedures for making the information referred to in Articles 16 and 17 available to holders of securities?

It should be noted that the information referred to in Articles 16 and 17 does not constitute regulated information. Under these articles, the issuer is thus not subject to the triple obligation (dissemination, filing with the CSSF and storage on the *OAM*) imposed on it with respect to regulated information.

Articles 16 and 17 provide that the issuer shall ensure that the information concerned is available in the home *Member State* (i.e. in Luxembourg). To this end, the issuer shall use the means that allow it best to reach the holders of its securities. Thus, in choosing the means used to make this information available, the issuer shall take account, among others, of the characteristics (such as nationality, size, etc.) of the investors to whom the information is intended.

23. Specifications regarding the notification exemption referred to in Article 11(3) of the *Transparency Law*

As regards Article 11(3) of the *Transparency Law*, it should be noted that the parent undertaking that makes the notification in accordance with that paragraph on behalf of one or more undertakings it controls is not necessarily the undertaking that has the final control. In any case, the latter is required to make a notification in accordance with Article 9(e) of the *Transparency Law*, if it is entitled to exercise its voting rights attached to the holdings of the undertakings it controls.

The notification shall contain all the information concerning the full chain of controlled undertakings, i.e. the names of all the controlled undertakings. Where a controlled undertaking holds a proportion of voting rights that exceeds or is equal to the minimum threshold of 5% of the issuer, the percentage held must also be stated.

In this context, the CSSF considers that the exemption provided for in Article 11(3) also applies to an undertaking if it is controlled by a natural beneficial owner, who holds these voting rights indirectly within the meaning of Article 9(e). The notion of "controlled undertaking" shall be understood within the meaning of Article 1(1)(4) of the *Transparency Law*.

24. (Removed)

25. Specifications relating to the obligations of issuers whose securities are only admitted to trading on a *regulated market* situated or operating on the territory of Luxembourg but whose home *Member State* is not Luxembourg

In accordance with Article 20(3) of the *Transparency Law*, an issuer whose securities are only admitted to trading on a *regulated market* situated or operating on the territory of Luxembourg but of which Luxembourg is not the home *Member State*, must publish its relevant regulated information in accordance with Article 20(1). These issuers are thus required to ensure effective dissemination as described in question 10.

Nevertheless, they are not required to store the regulated information in accordance with the *Transparency Law* (i.e. file it with a Luxembourg *OAM*) nor to file it with the CSSF. The CSSF is entitled to ask the relevant issuers how they disseminate their regulated information and to require the occasional or systematic notification of that regulated information in case it deems it necessary.

Thus, the fourth paragraph of point 5.a. of Circular CSSF 08/337 means that the issuers mentioned above must comply with the provisions regarding dissemination applicable to issuers of which Luxembourg is the home *Member State* even if Luxembourg is only the host *Member State*.

26. Who may benefit from the exemption to disclose half-yearly financial reports referred to in Article 30(6) of the *Transparency Law*?

Article 30(6) of the *Transparency Law* provides that issuers that have only issued debt securities already admitted to trading on a *regulated market* in the European Union before 1 January 2005 and that were subject to the provisions of point (2), letter A of Part I of Annex II of the *1990 Prospectus Regulation* at the point of admission of those debt securities, are exempt from the obligation to publish half-yearly financial reports in accordance with Article 4 of that law for ten years starting 1 January 2005.

The said point (2) of the *1990 Prospectus Regulation* concerns issuers of bonds which, due to their characteristics, are usually acquired or traded almost exclusively by a limited circle of investors that are particularly well-informed with respect to investment issues. Moreover, it specifies that issuers of euro-bonds belong to this type of issuers. The CSSF considers that the 19 latter, due to the fact that they address a limited circle of investors, are thus automatically exempt from the obligation to publish half-yearly financial reports (provided that all their debt securities have been issued before 1 January 2005).

As regards the other issuers that might be subject to the provisions of point (2), it should be noted that it is for the issuer to verify that it fulfils the requirements

laid down in that article. The CSSF may request confirmation from the issuers concerned.

The exemption provided for in Article 30(6) of the *Transparency Law* ended on 1 January 2015. Consequently, issuers that have benefited from said exemption are required to publish half-yearly financial reports in accordance with Article 4 of the *Transparency Law* as from financial years starting on or after 1 January 2015.

27. Specifications regarding the determination of the home *Member State* in relation to depositary receipts representing securities, including depositary receipts such as *GDR*, *ADR*, etc.

In order to determine the home *Member State*, the nature of the security admitted to trading on a *regulated market* should be considered first. As far as depositary receipts are concerned, these do neither qualify as shares nor as debt securities.

In this case, Article 1(1)(9)(b) of the *Transparency Law* provides that the home *Member State* is, at the choice of the issuer of the represented[8] securities, either the *Member State* in which the registered office of the issuer of the securities represented is situated, or one of the *Member States* in which there is a *regulated market* on which the depositary receipt representing securities are admitted to trading.

As regards fiduciary issues, please refer to question 29.

28. Which obligations apply to depositary receipts representing securities, including depositary receipts such as *GDR*, *ADR*, etc.?

Pursuant to Article 1(1)(3) of the *Transparency Law*, in the case of depositary receipts representing securities, the issuer which is subject to the requirements set down in the law is the issuer of the securities represented. The issuer subject to the requirements regarding the *periodic information* is thus the issuer of the securities represented by the receipts concerned. As depositary receipts representing securities are neither shares nor debt securities, the requirement to draw up half-yearly financial reports does not apply to issuers of the securities represented, insofar as only the depositary receipts would be admitted to trading on a *regulated market*. However, this requirement may apply to the issuers of the securities represented (considering the nature of the security represented)

[8] In this context, Article 1(1)(3) of the Transparency Law defines the issuer as "a natural person, or legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market. In the case of depositary receipts representing securities admitted to trading on a regulated market, the "issuer" means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market".

assuming that the securities represented would be admitted themselves to trading on a *regulated market*.

The only requirements set down in Chapters II and III of the *Transparency Law* that apply to the issuers of the securities represented other than shares are those laid down in Articles 3, 5 and 6 and 15(2).

For issuers of represented shares, the articles above are also applicable. In addition, Articles 8 to 14 and 15(1) of the *Transparency Law* are also applicable to those issuers as well as to the shareholders and the holders of depositary receipts representing shares of those issuers.

Consequently, as regards information concerning major holdings, the issuers of shares underlying the depositary receipts representing shares and the holders of such receipts are subject to the same requirements as the issuers of shares, and to the same requirements as the shareholders, respectively.

29. What are the characteristics of fiduciary issues for the purposes of the *Transparency Law* and the *Grand-ducal Transparency Regulation*?

In the context of fiduciary issues, the fiduciary issues fiduciary instruments which are sort of mirroring the underlying asset. The securities issued by the fiduciary under the fiduciary agreement take various names such as "fiduciary depositary receipts" or "fiduciary notes".

The fiduciary asset may consist in securities issued by an entity governed by private or public law and the securities concerned may consist in shares or bonds or other assets.

Considering the legal characteristics of the fiduciary agreement, and notably the fact that the fiduciary asset is not part of the pool of assets of the fiduciary in case the latter fails, the holders of fiduciary instruments take a financial risk on the underlying but not on the fiduciary.

The fiduciary instrument thus qualifies as a depositary receipt of the underlying for the purposes of the *Transparency Law*.

a) For the purpose of determining the home *Member State* of the underlying, the nature of the security admitted to trading on a *regulated market* must be taken into account. Under the *Transparency Law*, a fiduciary instrument is considered as a depositary receipt of securities or of other underlying assets; this depositary receipt does not qualify as a share, nor as a debt security. Consequently, at the choice of the issuer of the security represented, the home *Member State* is either the *Member State* in which the registered office of the issuer of the security represented is situated, or one of the *Member States* in which there is a *regulated market* on which the fiduciary instruments are admitted to trading. The same applies where the underlying is not a

security but another underlying asset. In the case of an underlying of a fiduciary instrument represented by a loan made by the fiduciary, the choice falls on the borrower. On the other hand, where the underlying is represented by a pool of assets, and/or where it is impossible, in practice, to determine a legal entity that fulfils the requirements incumbent on the issuer, this choice has to be made by the fiduciary.

b) Where the underlying consists of securities, the securities issued by the fiduciary must be considered as depositary receipts representing securities. In this context, Article 1(1)(3) of the *Transparency Law* defines the issuer as "a natural person, or legal entity governed by private or public law, including a State, whose securities are admitted to 21 trading on a *regulated market*. In the case of depositary receipts representing securities admitted to trading on a *regulated market*, the "issuer" means the issuer of the securities represented, whether or not those securities are admitted to trading on a *regulated market*". In this case, the issuer within the meaning of the *Transparency Law* subject to the requirements laid down in this law is the issuer of the underlying. In accordance with the above, such security is not to be considered as a share, nor as a debt security, so that only the requirements relating to the issuers of securities other than those two categories apply (cf. question 28).

c) The CSSF applies this general principle notably with respect to fiduciary instruments where the underlying consists of a loan or a pool of assets such as in the case of fiduciary securitisation funds. For a legal entity governed by private or public law that qualifies as a borrower of a loan made by the fiduciary and represented by fiduciary instruments, the borrower will be considered as issuer within the meaning of the *Transparency Law*. Where the underlying is represented by a pool of assets, and/or where it is impossible, in practice, to determine a legal entity that fulfils the requirements incumbent on the issuer, the fiduciary is responsible for ensuring that the transparency requirements are complied with. The regulated information to be provided in such cases relates to the underlying and not to the fiduciary, except where information concerning the fiduciary is likely to have a significant effect on the price of the fiduciary instruments.

30. How does the *Transparency Law* apply to closed-end *FCPs* (fonds communs de placement) and to securitisation funds consisting of one or several co-ownerships? (UPD)

Where the CSSF is the competent authority, the issuer within the meaning of the *Transparency Law* subject to the requirements laid down in that law is the management company of the closed-end *FCP* or the management company of the securitisation fund consisting of one or several co-ownerships.

However, the regulated information to be provided is related to the closed-end *FCP* or securitisation fund and not to the management company, except where information concerning the management company is likely to have a significant effect on the price of the units issued by the closed-end *FCP* or securitisation fund.

31. What are the obligations of the custodians having received an instruction to vote according to the requirements of the shareholders or the guidelines of the Board of directors of the issuer concerned?

The custodian required to vote in accordance with the specific instructions of its client, i.e. the owner of the shares deposited with the custodian and to which voting rights are attached, is not obliged to consider those voting rights in determining the percentage of the voting rights it holds. In this context, a specific instruction means an instruction to vote in a given manner, as well as an instruction to vote according to the guidelines given by the Board of directors of the issuer concerned.

A provision of the deposit agreement providing that the custodian shall vote for the actions in favour of the resolutions proposed by the Board of directors in the absence of opposite instructions is also considered as a specific instruction.

In other words, if the custodian can exercise its voting rights attached to shares only if it has been given a specific or general instruction in writing or by electronic means (as provided for in Article 8(3) of the *Transparency Law*), it is not subject to the obligation to notify major holdings.

However, if the custodian can exercise the voting rights attached to shares deposited with it at its discretion, i.e. in the absence of specific instructions from the shareholders (situation referred to in Article 9, point (f) of the *Transparency Law*), the requirements regarding notification as defined in Article 8(1) and (2) apply.

32. (Removed)

33. Do management companies and investment firms have to aggregate voting rights attached to shares making up the portfolios they manage for the purposes of notification of major holdings?

First, it has to be stressed that this note only applies to shares of an issuer whose home *Member State* is Luxembourg by virtue of the *Transparency Law*[9]. Like any other shareholder, a *UCI*, whether from Luxembourg or abroad, is required to notify its major holdings in such issuers[10].

In each case, an analysis should be made to establish who has the right to exercise the voting rights attached to the shares in the portfolio of one or more *UCI*s or of one or more sub-funds of a *UCI*.

Therefore, a management company that can exercise the voting rights attached to the shares which make up the portfolios it manages, is obliged to aggregate these voting rights, irrespective of whether the portfolios are in different sub-funds of one single *UCI* or in different *UCI*s.

However, where voting rights (or the exercise thereof) are contractually transferred to one or more natural or legal persons (such as, for instance, a portfolio manager), the management company in question is exempt from having to aggregate such voting rights[11]. In this case, the natural or legal person(s) that hold the voting rights are required to make a notification if the percentage of voting rights which they hold or which have been assigned to them in accordance with Articles 8, 9, 12 or 12a of the *Transparency Law*, reaches, exceeds or falls below one of the thresholds referred to in Article 8 of the *Transparency Law*. Moreover, if the percentage of voting rights held by the management company falls below one of the thresholds laid down in the *Transparency Law* as a result of a transfer of voting rights by the management company to such a person, the management company is required to make a notification.

The same principle also applies to investment firms, whether or not they are self-managed. Therefore, one needs to establish whether the voting rights attached to the shares in the portfolio (or the right to exercise such rights) have been transferred to a third party (such as a management company, approved managers or a portfolio manager).

34. Does an investor that holds shares in a *UCI* have to aggregate the voting rights attached to the shares in its *UCI* portfolio with the voting rights

[9] Luxembourg UCIs and management companies have to verify themselves the extent of their obligations in relation to issuers that have a different Member State, in compliance with the legislation of such other Member State.

[10] In this context, all references to the requirements of a UCIs have to be understood as references to the requirements of self-managed investment companies or to those of management companies in the case of FCP or investment companies with a designated management company.11.

[11] As long as such other person is free to exercise the voting rights at its discretion, independently of the management company in question.

attached to the shares the investor holds itself in accordance with Articles 8 or 9 of the *Transparency Law*?

No, unless the investor controls the *UCI* (whether open-ended or closed-ended)[12] within the meaning of Article 9(e) of the *Transparency Law* and except for the cases provided for in Article 4 of Commission Delegated Regulation (EU) 2015/761 of 17 December 2014, in which case the investor has to aggregate the voting rights attached to the shares in the *UCI*'s portfolio together with the voting rights attached to its own shares or to such shares which have been assigned to the investor in accordance with Articles 8 or 9 of the *Transparency Law*.

Moreover, the principles set out in question 33 apply, which means that the investor does not need to take into account those voting rights held by the *UCI* which have been assigned contractually to another natural or legal person.

35. When does the obligation to notify a holding of financial instruments pursuant to Article 12 of the *Transparency Law* arise?

Without prejudice to the requirements laid down in Article 12a of the *Transparency Law*, a natural or legal person that holds, directly or indirectly, financial instruments that result in the entitlement to acquire shares to which voting rights are attached is subject to the notification obligation laid down in Article 8 if the percentage of voting rights which can potentially be acquired reaches, exceeds or falls below one of the thresholds laid down in this article.

The obligation of notification arises at the moment of the acquisition of the financial instrument, even if such instrument has an exercise period that commences after the date of the acquisition. The date of acquisition is therefore the date on which the period for notification commences (four or six days, respectively).

If the financial instrument in question has an exercise period, the holder shall indicate in the notification the date or time period when shares will or can be acquired, in accordance with Article 12(3)(d) of the *Grand-Ducal Transparency Regulation*.

In such as case, it is important to note that the voting rights attached to specific instruments that have already been notified must be notified again where the underlying shares have been acquired and where this acquisition would result in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the above-mentioned thresholds.

[12] Please note that the notion of (real) control in this case has to be understood in relation to the entire UCI and not to single sub-funds seen in isolation.

36. Does the *Transparency Law* allow for compensation between increases and decreases of the percentage of voting rights in the same day?

In principle, a shareholder does not need to notify each operation which takes place in one day and which would be likely to trigger a notification of major holdings. It is sufficient to take into consideration the percentage of holdings at the end of each day.

The same applies to holdings held by a parent company or which have been attributed to it: thus a parent company which aggregates the voting rights it holds in its own portfolio, where applicable, to those held by entities it controls, does not need to make a notification if, at the end of the day, the percentage of voting rights it can exercise has not reached, exceeded or fallen below one of the thresholds laid down in Article 8 of the *Transparency Law*, even if the individual percentages have varied over the course of the day. However, if the percentage held on an individual basis by one of the controlled entities (or the percentage held by the parent company itself) reaches, exceeds or falls below one of the thresholds laid down in Article 8 of the *Transparency Law*, such entity (or its parent company in accordance with Article 11(3) of the *Transparency Law*) has to make a notification.

Please note that this principle only applies if the voting rights are not exercised during the day in question.

37. (Removed)

38. What is the meaning of "change in rights" referred to in Article 15(1) and (2) of the *Transparency Law*?

Issuers of securities only need to make public changes to the rights attached to securities admitted to trading on a *regulated market*.

If it is foreseen from the outset (for instance in the actual terms and conditions of a bond) that a specific event will automatically entail a change in rights, issuers are not obliged to publish, as the case may be, the change in rights which results from the occurrence of such specific event.

However, issuers must inform the public of the fact that the relevant event has taken place in case this is not already evident or of public knowledge. In case the event amounts to sensitive information, the issuer has to notify the public in accordance with the *Market Abuse Regulation*.

39. What are the obligations of undertakings for collective investment of the closed-end type and how is their home *Member State* determined?

Article 2(2) of the *Transparency Law* specifies that the law does not apply to units issued by *UCI*s other than the closed-end type nor to units acquired or disposed of in such *UCI*s. Closed-end *UCI*s therefore fall under the scope of application of the *Transparency Law*. Question 5 specifies that a *UCI* is considered to be of the closed-end type in the context of the *Transparency Law* if the investor has no repurchase right.

a) *UCI*s with a legal personality, i.e. *SICAV*s as well as other investment firms, the shares of which are admitted to trading on a *regulated market* situated or operating in a *Member State*, shall be considered as issuers of shares for the sake of the *Transparency Law*. Consequently, in accordance with the first indent of Article 1(1)(9)(a), the home *Member State* for all Luxembourg investment companies shall automatically be Luxembourg. Their status as issuer of shares also implies that they must comply with the requirements on major holdings which are laid down in Articles 8 to 14 of the *Transparency Law*.

   Where an investment company only holds securities other than shares admitted to trading on a *regulated market*, only the requirements applicable to the type of issuer in question need to be followed[13].

b) For the purposes of the *Transparency Law*, the units which make up closed-end *FCP*s are to be considered as other securities equivalent to shares, i.e. neither actual shares nor debt securities[14]. Given the fact that *FCP*s do not have a legal personality, their respective management companies shall comply with the requirements laid down in the *Transparency Law*.

   Given the fact that units admitted to trading are neither shares nor debt securities, Article 1(1)(9)(b) applies for the determination of the choice of the home *Member State*. Thus a management company of a closed-end *FCP* may choose a home *Member State* from among the *Member State* in which the management company has its registered office and those *Member State*s which have admitted the *FCP*'s units to trading on a *regulated market* situated or operating on their territory.
   Without prejudice to the obligations on dissemination, storage and filing with the CSSF of its regulated information, the obligations under the *Transparency Law* applicable to closed-end *FCP*s the units of which are admitted to trading

[13] *For instance, a SICAV which issues bonds admitted to trading on a regulated market but whose shares are not listed shall comply with the requirements applicable to issuers of debt securities and its home Member State is determined according to the nominal value of the debt securities in question*

[14] *As a matter of fact, contrary to the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market which includes in the notion of "equity securities" shares and other securities equivalent to shares, the Transparency Law distinguishes between these two categories of securities.*

on a *regulated market* are laid down in Articles 3 and 15(2) of the *Transparency Law*.
Where a closed-end *FCP* also has debt securities admitted to trading on a *regulated market*, the requirements for issuers of debt instruments also need to be complied with.

40. The European Commission's decision of 12 December 2008 specifies the use by third country issuers of securities of certain third countries' national accounting standards and international financial reporting standards to prepare their consolidated financial statements.

Does the CSSF accept that this decision is, in principle, also applied to the drawing up of non-consolidated financial statements?

Following its decision dated 12 December 2008, the European Commission considers that the US and Japanese *GAAP*s are equivalent to *IFRS* standards as from 1 January 2009 as regards annual and half-yearly consolidated financial statements. As from 1 January 2012[15], the *GAAP*s of the People's Republic of China, Canada and Republic of Korea for annual and half-yearly consolidated financial statements are considered equivalent to *IFRS*. For the financial years starting before 1 April 2016[16], third-country issuers are authorised to draw up their annual and half-yearly consolidated financial statements in accordance with the generally accepted accounting principles of the Republic of India.

The CSSF considers that the reasoning behind the decisions of the European Commission as regards accounting standards to be applied for the drawing up of consolidated financial statements also applies to the drawing-up of individual accounts by a third-country issuer, in particular with a view to ensuring consistency with the presentation of the financial information and in order to take account of the principle of continuity of the presentation of the financial statements.

Thus, third-country issuers whose home *Member State* is Luxembourg for the purposes of the *Transparency Law* may resort to one of the above-mentioned accounting standards considered to be equivalent to *IFRS* or, for the financial years commencing prior to 1 April 2016, to the generally accepted accounting principles of the Republic of India in order to draw up their consolidated and non-consolidated financial statements.

[15] According to the Commission Implementing Decision of 11 April 2012 (2012/194/EU) amending Commission Decision of 12 December 2008 (2008/961/EC).

[16] According to the Commission Implementing Decision 2012/1612 (EU) of 23 September 2015 amending Commission Decision of 12 December 2008 (2008/961/EC).

41. What is the denomination per unit to be considered in the determination of an issuer's home *Member State* and in determining the exemptions set out in Article 7 of the *Transparency Law*?

The following situations may arise:

- In case of debt securities which are not fully paid-up at the time of their admission to trading on a *regulated market*, the denomination per unit corresponding to the 'fully paid-up' value is deciding.
- In case of an amortisation of debt securities, the 'total denomination per unit at the date of their issue' needs to be taken into account, without consideration of the amortised amount per security.
- In case of a 'change to the denomination per unit' of debt securities, the changed obligations which result from the new situation in which the issuer in question may find itself shall apply from the moment of the effective change to the denomination per unit. In concrete terms, the exemptions of Articles 3 and 4 provided for in Article 7(1)(b) of the *Transparency Law* shall apply, without prejudice to Article 7(4) of the *Transparency Law*, where there is an increase in the denomination per unit, from the date on which the issuer in question only has debt securities admitted to trading on a *regulated market* with a denomination per unit of at least EUR 100,000. If this date is before the date of publication of the financial reports set out in Articles 3 to 4 of the *Transparency Law*, the issuer is no longer required to publish the reports in question. Conversely, without prejudice to Article 7(4) of the *Transparency Law*, the exemptions laid down in Article 7(1)(b) shall no longer apply if, following a decrease in the denomination or a new issue of debt securities, the issuer in question has debt securities admitted to trading on a *regulated market* with a denomination of less than EUR 100,000. In this case, the reasoning under question 1 shall apply to the drawing up and to the publication of financial reports referred to in Articles 3 and 4 of the *Transparency Law*.
- Without prejudice to Article 7(4) of the *Transparency Law*, if the prospectus states that debt securities can only be acquired and transferred from EUR 100,000 upwards but the denomination per unit is less than EUR 100,000, the issuers shall fall under the provisions laid down in Articles 3 and 4 of the *Transparency Law*.
- For zero coupon bonds, the denomination per unit needs to be taken into account, not the issue price of the bond. This means that even if a zero coupon bond is subscribed at an issue price of 60% of its denomination, the denomination per unit as described in the prospectus is deciding.

As regards the thresholds for debt securities issued in a currency other than Euro, the explanations given to question 15 shall apply.

42. What legislation applies in determining whether an issuer is required to draw up consolidated financial statements or non-consolidated financial statements?

According to Article 3(3) of the *Transparency Law*, issuers shall refer to the *7th Directive*, to Directive 86/635/EC on the annual accounts and consolidated accounts of banks and other financial institutions or to Directive 91/674/EC on the annual accounts and consolidated accounts of insurance undertakings in order to ascertain whether or not they have to draw up consolidated accounts.

For issuers with registered office in a *Member State*, the respective national legislation which transposed the above-mentioned directives into national law is deciding.

Thus, issuers with registered office in Luxembourg (excluding credit institutions and insurance and reinsurance undertakings) shall comply with Section XVI, sub-section 1 - 'Conditions for the preparation of consolidated accounts' of the *Law on commercial companies*. Credit institutions incorporated under Luxembourg law shall comply with Chapter 1 of Part III - 'Conditions for the preparation of consolidated accounts' of the law of 17 June 1992 relating to the accounts of credit institutions, as amended. Insurance and reinsurance undertakings shall comply with Chapter 1 of Part III - 'Conditions relating to the drawing-up of consolidated 28 accounts' of the Law of 8 December 1994 relating to the annual accounts and consolidated accounts of insurance and reinsurance undertakings, as amended.

Issuers with registered office in a *third country* may comply with their applicable national legislation, provided it contains conditions comparable to those contained in the above-mentioned European directives. If the national legislation does not contain provisions relating to these matters or if it does not contain comparable conditions, issuers shall have to draw up consolidated accounts and a consolidated management report if one of the conditions laid down in Article 1 of the *7th Directive* is fulfilled (without prejudice to the exemptions provided in said directive).

43. Which legislation needs to be relied on in order to determine the content of the management report required by Article 3(5) of the *Transparency Law*?

According to Article 3(5) of the *Transparency Law*, the management report shall be drawn up in accordance with Article 46 of the *4th Directive* and, in accordance with Article 36 of the *7th Directive* where the issuer is required to prepare consolidated accounts.

For issuers with registered office in a *Member State*, the respective national legislation which transposed the above-mentioned directives into national law determines the content of the management report.

Thus, issuers with registered office in Luxembourg (excluding credit institutions and insurance and reinsurance undertakings) shall comply with Section 9 - 'Content of the management report' of the law of 19 December 2002 concerning the trade and companies register as well as the accounting and annual accounts of companies or with Section XVI, sub-section 3 – 'The Consolidated management report' of the *Law on commercial companies*. Credit institutions incorporated under Luxembourg law shall comply with Chapter 9 of Part II – 'Contents of the management report' or with Chapter 5 of Part III – 'Consolidated management report' of the law of 17 June 1992 relating to the accounts of credit institutions, as amended. Insurance and reinsurance undertakings shall comply with Chapter 9 of Part II – 'Content of the management report' or with Chapter 5 of Part III – 'Consolidated management report' of the law of 8 December 1994 relating to the annual accounts and consolidated accounts of insurance and reinsurance undertakings, as amended.

In accordance with Article 11(2) of the *Law on Takeover Bids*, the companies mentioned in Article 1(1)[17] of this law must publish detailed information on points (a) to (k) of the above-mentioned Article 11(1).

In the absence of a decision regarding equivalence taken by the CSSF in accordance with Article 21 of the *Transparency Law*, issuers with registered office in a *third country* shall comply with Article 46 of the *4th Directive* and, if they have to draw up consolidated accounts, with Article 36 of the *7th Directive*. In principle, the CSSF also accepts management reports drawn up according to a third-country issuer's national legislation, provided that the content of the management report in question is similar to that required by the *Transparency Law*.

According to Article 36(3) of the *7th Directive*, where a consolidated annual report is required in addition to an annual report, the two reports may be presented as a single report.

44. (Removed)

45. Are issuers whose home *Member State* is Luxembourg in accordance with the *Transparency Law* covered by Circular CSSF 10/437 which provides guidelines concerning the remuneration policies in the financial sector?

No, issuers which fall within the scope of application of the *Transparency Law* are not automatically covered by Circular CSSF 10/437 given that this circular only

[17] *Issuers whose registered office is in Luxembourg and whose shares are admitted to trading on a regulated market, i.e. issuers that could be subject to a takeover bid, regardless of their current shareholder situation or the presence of other elements that are likely to not directly allow in practice the launch of such a bid.*

addresses entities, persons whether natural or legal, subject to the prudential supervision of the CSSF.

It follows that this circular only applies to entities subject to the *Transparency Law* which are also subject to the prudential supervision of the CSSF.

This is also laid down in the answer to question 5 of the FAQ in relation to Circular CSSF 10/437 which can be found on the CSSF's website.

46. Buy-backs of debt securities by or on behalf of the issuer

Article 17 (1) of the *Transparency Law* requires issuers of debt securities that are admitted to trading on a *regulated market* and whose home *Member State* under the *Transparency Directive* is Luxembourg to ensure that all holders of debt securities ranking pari passu are given equal treatment in respect of all the rights attaching to those debt securities. The "rights attaching" to debt securities covered by Article 17(1) do not include any right of the holders to receive an offer to buy the securities made by or on behalf of the issuer.

The issuer will, however, have to adhere, as the case may be, to all applicable provisions (including information requirements) under the *Market Abuse Regulation*.

47. What are the impacts of the entry into force of the *Law of 3 July 2012* on the transparency requirements for issuers?

The first paragraph of Article 6 of the *Law of 3 July 2012* amends the denomination per unit provided for in Article 7(1)(b) of the *Transparency Law* relating to certain exemptions in respect of *periodic information*.

Consequently, issuers which issued debt securities with a denomination per unit below EUR 100,000 (or its equivalent in any other currency) on 31 December 2010 or thereafter, will be subject as from 1 July 2012, to the transparency requirements that apply since the entry into force of the *Transparency Law* to issuers having issued debt securities with a denomination per unit below EUR 50,000 (or its equivalent in any other currency). Thus, these issuers will, henceforth, have to prepare and publish annual and half-yearly financial reports.

For all the reports referred to above which relate to the periods starting on 1 July 2012 or thereafter, all provisions laid down in the *Transparency Law*, i.e. both those relating to the content of the reports and those relating to the procedures and deadlines for their dissemination, their availability at an *OAM* and their filing with the CSSF, must be complied with.

For reports which relate to periods having started prior to 1 July 2012 and ending thereafter, as well as for reports published on 1 July 2012 or thereafter and which

relate to periods ended before said date, the CSSF considers that the provisions of the *Transparency Law* must only be complied with as to the procedures and deadlines for dissemination, the availability at an *OAM* and filing with the CSSF. Thus, the CSSF considers that the content of these reports may comply, where appropriate, with the laws and regulations applicable before the above-mentioned amendments. However, the CSSF would like to emphasise that from the moment the issuer has to comply with all the provisions of the *Transparency Law*, it must provide comparative figures of the preceding financial year.

Paragraphs 2 and 3 of Article 6 of the *Law of 3 July 2012* amend the thresholds of EUR 50,000 referred to under Article 17(3) of the *Transparency Law* regarding the information requirements applicable to issuers whose debt securities are admitted to trading on a *regulated market* and under Article 19(8) of the *Transparency Law* regarding the language regime. Indeed, these thresholds are also increased to EUR 100,000.

We would also like to point out that Article 6 of the *Law of 3 July 2012* provides the grandfathering clause which applies to debt securities the denomination per unit of which is at least EUR 50,000 (or its equivalent in any other currency) and which have been admitted to trading on a *regulated market* before 31 December 2010, for as long as such debt securities are outstanding.

Questions 11, 15 and 41 are modified accordingly.

Moreover, in accordance with Article 2(10) of the *Law of 3 July 2012*, Article 14 of the Law of 10 July 2005 on prospectuses for securities (repealed by the *Prospectus Law*) is deleted. Issuers whose securities are admitted to trading on a *regulated market* are no longer required to file the Annual Document referred to in this article.

Consequently, the relevant question 32 is deleted.

The above-mentioned provisions of the *Law of 3 July 2012* entered into force on 1 July 2012.

48. In which case does an issuer not subject to the provisions of Articles 3 and 4 of the *Transparency Law* have to publish *periodic information*?

The issuers that are not required to draw up *periodic financial reports* in accordance with Articles 3 and 4 of the *Transparency Law*, either by virtue of the characteristics of their securities admitted to trading on a *regulated market*, or because they benefit from one of the exemptions provided for in Article 7 of the *Transparency Law*, are, however, still required to publish any information considered as inside information in accordance with Article 17 of the *Market Abuse Regulation*. Indeed, the notion "regulated information" which is defined in Article 1(1)(10) of the *Transparency Law* also refers to inside information.

In general, it should be noted that the responsibility to publish certain information that represents inside information within the meaning of Article 17 of the *Market Abuse Regulation* lies with the issuer concerned. The same applies when determining if the information fulfils the conditions of inside information as laid down in the *Market Abuse Regulation*. In case of doubt, it is recommended to consider the information as inside information.

However, the CSSF considers that a periodic financial report that has been made available to the public by an issuer exempted from this specific requirement under the *Transparency Law*, on its own initiative or in order to comply with another legal or regulatory requirement, is in principle inside information, given the nature of the information it holds and notably if there are important figures or other still undisclosed important information.

As a consequence, such periodic financial report must be disclosed according to the provisions of the *Transparency Law*, i.e. effectively disseminated, stored on the *OAM* and filed with the CSSF. However, the provisions of the *Transparency Law* on the content and deadlines do not apply for these reports, as opposed to the reports established pursuant to Articles 3 and 4 of the *Transparency Law*.

If the information contained in the periodic financial report has already been published by means of a press release, which has been disseminated, stored on the *OAM* and filed with the CSSF, the issuer would not be required to publish the report itself again in accordance with the requirements of the *Transparency Law*.

According to the same principle, the documents made available in the context of a general meeting (e.g. the annual and consolidated accounts, the management report or the report of the réviseur d'entreprises (statutory auditor)) and that fulfil the criteria of inside information must be published like any other regulated information.

The mere fact of making these documents available on the issuer's website is not sufficient if these documents have not yet been disclosed in accordance with the *Transparency Law*. In this context, reference should also be made to question 49.

49. Should the documents that have been made available in the context of the preparation of a general meeting be published in accordance with the provisions of the *Transparency Law*?

The documents made available in the context of the preparation of a general meeting and which fulfil the criteria of inside information within the meaning of the *Market Abuse Regulation*, shall be filed with the CSSF, stored on the *OAM* and disseminated in accordance with the provisions of the *Transparency Law* like any other regulated information. Thus, for example, the mere fact of making the annual and consolidated accounts, the management report and the report of the réviseur d'entreprises (statutory auditor) available on the issuer's website is not

sufficient if these documents have not yet been disclosed in accordance with the *Transparency Law*[18]. These issuers are thus required to ensure an effective dissemination as described in question 10.

50. What obligations apply in the context of major holdings when subscribing shares of an issuer subject to the *Transparency Law*?

If one or more thresholds referred to in Article 8 are reached or exceeded upon the subscription of shares, a distinction should be made between two cases that notably apply to:

- issuers whose securities are already admitted to trading on a *regulated market*;
- issuers whose securities are not yet admitted to trading on a *regulated market*.

In the first case, a notification is required in accordance with Article 8 of the *Transparency Law* following the allocation of these shares. Thus, the shareholder shall make a notification to the issuer and file this notification with the CSSF promptly but no later than six trading days following the confirmation of the number of subscribed securities.

In the second case, the issuers of shares and the shareholders shall refer to question 3(a) for clarifications regarding their notification obligations.

51. At what point is a shareholder required to notify that a threshold has been breached following the publication of the total number of voting rights in accordance with Article 14?

A shareholder is required to notify any change in the breakdown of its voting rights if, due to this change, one of the thresholds referred to in Article 8 of the *Transparency Law* is breached, as soon as the shareholder has been informed of the disclosure made by the issuer in accordance with Article 14 of the *Transparency Law*. The CSSF deems the shareholder as being informed at the latest within four trading days following the last day of the month during which the issuer has made the disclosure in accordance with Article 14.

52. Clarifications as to the new requirement to draw up a report on payments to governments

The issuers active in the extractive or logging of primary forest industries must draw up, in accordance with Article 5 of the *Transparency Law*, and in accordance

[18] *I.e. effective dissemination, storage on the OAM and filing with the CSSF.*

with Chapter 10 of the *Accounting Directive*, a report on payments to governments.

Chapter 10 of the *Accounting Directive* provides a definition of the issuers subject to this requirement[19] and details the requirements regarding the content of the reports on payments to governments.

The reports on payments to governments, drawn up on an annual basis, shall be published according to the provisions of the *Transparency Law* (effective dissemination, *OAM* storage and CSSF filing) at the latest six months after the end of each financial year. Nevertheless, the issuers concerned also have the possibility to include the report on payments to governments in their annual financial report, which shall be published four months after the end of each financial year.

The obligation to publish a report on payments to governments shall apply as from financial years starting on or after 1 January 2016 or after that date.

53. What are the obligations of issuers whose home *Member State* has changed?

Issuers for which Luxembourg becomes the home *Member State* are subject to the requirements of the *Transparency Law* as from the date on which Luxembourg has become the home *Member State* in accordance with the definition of home *Member State* in Article 1(1)(9) of the *Transparency Law*. The *Transparency Law* regime with respect to *periodic information* is, in principle, entirely applicable as from the date the home *Member State* changes. An issuer that, at the date of change of the home *Member State*, is already compliant with the obligations of its former home *Member State* concerning its last *periodic information*, will not be required to comply with Luxembourg requirements as well. Nevertheless, the issuer will be required to inform the CSSF of the measures taken in connection with the regulations of its former home *Member State*, in order to allow the CSSF to ensure compliance with the transparency obligations during transition. The obligations with respect to ongoing information also apply as from the date the home *Member State* changes (cf. question 3).

Issuers for which Luxembourg is no longer the home *Member State* are no longer subject to the requirements of the *Transparency Law* as from the date on which the change of home *Member State* becomes effective. This applies to *periodic information* (same principle as in question 14) as well as to ongoing information.

[19] *Article 41(1) and (2) of the Accounting Directive*

54. How long does the choice of home *Member State* remain valid?

Question 4 states the various home *Member State* scenarios. According to the definition of home *Member State* of Article 1(1)(9) of the *Transparency Law*, issuers other than issuers of shares and issuers of debt securities the denomination per unit of which is less than EUR 1,000, choose their home *Member State* amongst the *Member State*s where the issuer concerned has its registered office, where applicable, and the *Member State*s where its securities are admitted to trading on a *regulated market*. For these issuers, the choice of home *Member State* shall remain valid for at least three years unless the securities of the issuer are no longer admitted to trading on any *regulated market* in the Union or unless the issuer concerned falls under letters (a) or (c) of Article 1(1)(9) of the *Transparency Law* during this three-year period.

Issuers of shares and issuers of debt securities the denomination per unit of which is less than EUR 1,000 that have their registered office in a *third country* shall choose a home *Member State* amongst the *Member State*s where their securities are admitted to trading on a *regulated market*. The validity of the choice of these issuers' home *Member State* is not limited to three years. Nevertheless, the issuer may choose a new home Member Sate under letter (c) of Article 1(1)(9) of the *Transparency Law* if its securities are no longer admitted to trading on a *regulated market* of its home *Member State*. In order to make its new choice effective, the issuer must disclose its choice in accordance with the second indent of this point (9).

55. Details regarding the accounting standards to be used for financial information published on a voluntary basis

An issuer which, in addition to its potential obligations under Articles 3 and 4 of the *Transparency Law*, prepares financial information on a voluntary basis, must prepare this information according to the same accounting and measurement principles than for the preparation of annual or half-yearly accounts.

In order to allow investors to compare figures contained in financial statements from one accounting period to the next, the CSSF considers that the principles and accounting standards used in the preparation of *periodic information* must not be changed from one period to the next, unless there were changes to the accounting standards. In a few situations exceptions to this principle are possible; however, they need to be mentioned in the notes to the report concerned and duly reasoned. Where it proves necessary to add additional explanations to the figures in order not to mislead investors when comparing them, these explanations shall be highlighted appropriately.

56. What obligations apply in the context of major holdings regarding contracts relating to shares of an issuer subject to the *Transparency Law*?

Once a person has subscribed to a contract relating to shares of an issuer whose shares are admitted to trading on a *regulated market* and whose home *Member State* is Luxembourg, it is, in principle, subject to the obligations that apply in the context of major holdings, if one or several thresholds laid down in Article 8 are reached or exceeded.

The specific cases of Sale and Purchase Agreement-type contracts relating to shares to which voting rights are attached shall be considered as share acquisitions or disposals within the meaning of Article 8(1).

In the other cases (notably where no voting rights are attached to the shares concerned or where the relevant contract is subject to suspensive clauses), the contract shall be considered as being a specific financial instrument within the meaning of Article 12(1)(b) of the *Transparency Law*.

Thus, where it reaches or exceeds one or several thresholds laid down in Article 8, the person concerned shall be subject to the obligation to notify within six trading days following the transaction (i.e. the signature of the contract) in accordance with Article 11(2) of the *Transparency Law*.

57. Do issuers benefitting from the exemption under article 7 of the *Transparency Law* have to publish their annual financial reports in the "European Single Electronic Format" ("ESEF")? (NEW)

No, issuers benefitting from the exemption under article 7 of the *Transparency Law* are not required to prepare their annual financial reports in accordance with article 3 of the *Transparency Law* (based on article 4 of the *Transparency Directive*). Therefore those issuers do not fall into the scope of the obligation to publish their annual financial reports in accordance with the *ESEF regulation*, even if they publish however annual financial reports (for example on its own initiative or in order to comply with another legal or regulatory requirement).
The CSSF also reminds that those issuers are, however, still required to publish any information considered as inside information and should refer to FAQ 48 in this context.

Commission de Surveillance du Secteur Financier
283, route d'Arlon
L-2991 Luxembourg (+352) 26 25 1-1
direction@cssf.lu
www.cssf.lu