The new prospectus regime - FAQ

1. What are the impact and the consequences of the Prospectus Law and the Prospectus Regulation?

The law on prospectuses for securities of 10 July 2005 (the **Prospectus Law**) sets up a new framework for the drawing-up, approval and distribution of prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market. Indeed, the Luxembourg procedure regarding the approval of prospectuses for securities has been completely reshuffled by the transposition in Luxembourg of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (the **Prospectus Directive**).

The purpose of the Prospectus Directive and Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses, as well as the format of the prospectuses, incorporation by reference and publication of such prospectuses and dissemination of advertisements (the **Prospectus Regulation**) is to harmonise, within the European Union, the requirements relating to the drawing-up, approval and distribution of the prospectus to be published when securities are offered to the public and/or admitted to trading on a regulated market situated or operating within the territory of a Member State. No prospectus shall be published until it was granted “approval” by the home Member State’s competent authority. This approval is however subject to the compliance with common European standards relating to the content of the information to be published and the terms of publication. The detailed information that has to be included in a prospectus falling under Community scope is defined by the Prospectus Regulation which notably follows the principles laid down by IOSCO (International Organisation of Securities Commissions) and the accounting standards IAS/ IFRS.

The prospectuses drawn up in accordance with the Prospectus Regulation will be able to benefit from the single European passport, which means that a prospectus, once approved for the offer to the public or the admission to trading on a regulated market by the competent authority in Luxembourg, the Commission de Surveillance du Secteur Financier (the **CSSF**), will be accepted anywhere across the European Union. Conversely, prospectuses benefiting from the European passport owing to their approval by the competent authority of another EU Member State are allowed to proceed to an offer to the public or admission to trading on a regulated market in Luxembourg by way of a simple notification by the competent authority.

2. What are the different regimes set up by the Prospectus Law?

The Prospectus Law provides for three different prospectus regimes:

i. a first regime (Part II of the Prospectus Law) with respect to offers of securities to the public and admissions of securities to trading on a regulated market, which are subject to Community harmonisation, and transposing the rules of the Prospectus Directive;

ii. a second regime (Part III of the Prospectus Law) defining the Luxembourg rules that apply to offers to the public and to admissions to trading on a regulated market of securities and other comparable instruments, which are outside the scope of the Prospectus Directive, and providing for a simplified prospectus regime; and

iii. a third regime (Part IV of the Prospectus Law), setting up a Luxembourg-specific regime applying to admissions of securities to trading on a market that is not included in the list of regulated markets published by the European Commission.

Circular CSSF 05/226 of 16 December 2005 concerning the law on prospectuses for securities and the technical specifications regarding communications to the CSSF of documents for the approval or for filing and of notices for offers of securities to the public and admissions of securities to trading on a regulated market (**Circular 05/226**) provides, among other things, a general overview of the Prospectus Law. The first part of Circular 05/226 thus presents the European context of the Prospectus Law, the three different regimes set up by the latter for the approval of prospectuses and the competences and duties of the CSSF in this context. Moreover, the document "CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses n° 809/2004" is annexed to Circular 05/226. Of course, these recommendations only apply to the prospectuses set up under the first regime of the Prospectus Law.

It should also be noted in this context that Circular 05/226 repeals, *inter alia*, with effect from 1 January 2006 circulars CSSF 05/195 of 18 July 2005 and 05/196 of 19 July 2005 and integrated their content in a consolidated version (c.f. question/answer no.4 in this context).

3. CSSF or Luxembourg Stock Exchange – which entity is competent for the approval of prospectuses?

The Prospectus Law designates the CSSF as the competent authority to ensure the enforcement of the provisions of Part II (when Luxembourg is the home Member State), which deals with the drawing-up, approval and distribution of the prospectus when securities are offered to the public and/or admitted to trading on a regulated market, which are subject to Community harmonisation under the Prospectus (article

22 of the Prospectus Law) and of the provisions of Chapter 1 of Part III which deals with the drawing-up, approval and distribution of prospectuses to be published when securities and other comparable instruments not covered by Part II (article 43 of the Prospectus Law) are offered to the public. In accordance with articles 7 and 13 of Part II, Chapter 1 of the Prospectus Law, the CSSF is the competent authority for the approval of prospectuses and any supplements thereto, drawn up for offers of securities to the public and/or admission of securities to trading on a regulated market, which are subject to Community harmonisation under the Prospectus Directive, when Luxembourg is the home Member State. The filings of documents and notices in accordance with Part II of the Prospectus Law shall also be made with the CSSF. Similarly, in accordance with articles 31 and 39 of Part III, Chapter 1 of the Prospectus Law, the CSSF is the competent authority for the approval of simplified prospectuses and any supplements thereto, drawn up for offers to the public of securities and other comparable instruments not covered by Part II. The filings of documents and notices in accordance with Part III shall also be made with the CSSF. The simplified prospectuses subject to Part III do not benefit from the European passport and the rules as regards their content are in principle determined by circular CSSF 05/210 of 10 October 2005 on the drawing-up of a simplified prospectus within the scope of Chapter 1 of Part III of the law on prospectuses for securities.

The Luxembourg Stock Exchange (*Bourse de Luxembourg*, which is currently the only market operator authorised to operate one or several securities markets situated or operating within the territory of Luxembourg) shall be the competent authority for the approval of prospectuses subject to the provisions of Chapter 2 of Part III (admissions of securities not covered by Part II to trading on a regulated market operated by the Luxembourg Stock Exchange) and of Part IV (admissions of securities to trading on a Luxembourg market not included in the list of regulated markets published by the European Commission).

While the Prospectus Law introduces a new definition of the powers as regards the prospectus approval as defined above, the powers regarding the decisions with respect to the admission of securities to trading on a market and/or official listing remain unchanged. Indeed, the decisions with respect to the admission of securities to a market and/or official listing continue to fall within the remit of the relevant market operator and are taken in accordance with the provisions laid down in the rules governing the functioning of this operator (currently in Luxembourg: the Rules and Regulations of the Luxembourg Stock Exchange, published in *Mémorial* A – No. 99 of 12 July 2005), it being understood that compliance of the underlying documents with the Prospectus Law is one of the requirements to be fulfilled.

4. How does the issuer communicate with the CSSF as regards the approval of a prospectus?

Following its designation as competent authority for the approval of prospectuses of securities in accordance with the Prospectus Law, the CSSF agreed with the Luxembourg Stock Exchange, previously in charge, that the latter would assist the CSSF with the approval procedure. Following six months of assistance (from 1 July 2005 to 31 December 2005 (inclusive)), both entities have decided that the CSSF will fulfil alone, as from 1 January 2006, the tasks relating to the approval of prospectuses, so as to make the procedure more efficient and transparent. This change will bring about as major practical consequence a straightforward communication with the persons wishing to offer securities to the public in Luxembourg or seeking admission to trading on a regulated market of securities in Luxembourg, notably under Part II and Chapter 1 of Part III of the Prospectus Law.

The second part of Circular 05/226 sets out in detail the technical specifications regarding communications to the CSSF, under the Prospectus Law, of documents for the approval or for filing and of notices for offers of securities to the public and admissions of securities to trading on a regulated market. All practical elements as regards the communications to the CSSF are set out in Circular 05/226.

5. What shall be the final date of a prospectus?

The date of the prospectus shall be, in principle, as close to the approval date as possible and at least that of the prospectus' submission. The date of a prospectus assures the investor that until that date all the required elements were included in the prospectus. For instance, in case the issuer's figures (annual or interim) are released between the submission of the file and the approval, and their incorporation in the prospectus is required by the relevant schedules of the Prospectus Regulation, the prospectus' date shall at least be that of these interim figures (which are bound to be included or incorporated in the prospectus, where applicable). An issuer may wish that the prospectus approved by the CSSF be dated the same day as its approval. This request can be granted in case the CSSF analyses the prospectus in the form of a draft and considers that it complies with the Prospectus Law and the Prospectus Regulation and thus decides to approve the final prospectus subject to its receipt (including the missing final details, notably the date of the prospectus).

Informing the CSSF of the requested date of approval (which can of course not precede the date of the prospectus) allows the CSSF to prepare the approval of the final prospectus which can be sent to the issuer as soon as possible after the receipt of the final prospectus. It should be noted in this context that, in accordance with articles 16 and 31 of the Prospectus Law, it is the prospectus approved by and filed with the CSSF that is available to the public.

6. Can a "Red Herring" Prospectus be approved by the CSSF?

A prospectus is approved only if it is final (following confirmation by the issuer or its proxy that it is the final version). As in the past, information concerning the number of securities to be issued and the exact price of the securities do not need to be included for a stand-alone prospectus to be approved.

7. How are the approved prospectus published?

The Prospectus Law does not take up the option provided by the Prospectus Directive to require publication of a notice stating how the prospectus has been made available to and where it can be obtained by the public. All possibilities for publication provided by the Prospectus Directive (newspapers, printed brochures, website) have been integrated into the Prospectus Law. Furthermore, the prospectuses are published by the CSSF on the website of the Luxembourg Stock Exchange for a period of at least twelve months.

Pursuant to article 16 (4) and article 38 (4) of the Prospectus Law, the CSSF has delegated the publication of prospectuses to the Luxembourg Stock Exchange, which will publish them on its website at http://www.bourse.lu. The publication requirement that lies with the issuer in accordance with articles 16 and 38, paragraphs 1-3 of the Prospectus Law, is thereby fulfilled in Luxembourg. Investors will thereby be able to have effective and in principle free-of-charge and real-time access to information.

This does not prevent the issuer however from using additional means of publication. Every investor can receive, upon his request, a free-of-charge paper copy of the prospectus. This request should be made to the issuer, offeror, person who asked for the admission of securities to trading on a regulated market or to the financial intermediaries placing or selling the securities concerned.

8. At what date should a prospectus be published?

In principle, the prospectus shall be published on the very day of its approval (or the following day), save for a justified request of the issuer (subject to compliance with the principle providing that a prospectus shall be published before the beginning of an offer to the public or an admission to trading).

9. Can new tranches of bonds issued under a prospectus approved under the former regulations be admitted to trading on the regulated market of the Luxembourg Stock Exchange after 1 July 2005?

According to article 62.-3[1] of the Prospectus Law, an issuer could "apply for approval of the prospectus (…) pursuant to the provisions of Grand-Ducal regulation of 28 December 1990" until 30 June 2005. Thus, the time of the request and the receipt of the approval of the prospectus by the Luxembourg Stock Exchange (i.e. the date of the visa granted by the Luxembourg Stock Exchange and the (conditional) decision of admission to official listing) is decisive as to whether tranches can be admitted to trading on the regulated market operated by the Luxembourg Stock Exchange as from 1 July 2005 under the base prospectus initially set up for the admission to official listing of the Luxembourg Stock Exchange.

Pursuant notably to the preservation of acquired rights, an issuer can have new bond tranches admitted to trading on the regulated market of the Luxembourg Stock market under a base prospectus approved before 1 July 2005 in accordance with the former regulations during the whole period of validity of its base prospectus (maximum of 12 months). In this context, it should be noted that Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published in those securities does not set a period of validity for base prospectuses relating to a programme, but Circular CaB 98/7 of 15 October 1998[2] and article 3-3 of Chapter VI of the Luxembourg Stock Exchange Rules and Regulations (in its former version)[3], fixed this period to twelve months.

[1] Article 62.3 : "Until 30 June 2005, an issuer, an offeror or a person asking for admission of securities to trading on a regulated market situated or operating within the territory of Luxembourg may apply for approval of the prospectus to be published when securities are offered to the public and are subject to admission to trading on a regulated market or are subject only to admission to trading on a regulated market, either to a market operator pursuant to the provisions of Grand Ducal Regulation dated 28 December 1990 (…), or to the Commission pursuant to the provisions of Regulation (EC) No 809/2004 (…), regardless of the date of application of such regulation or, when securities are offered to the public and are subject to admission to trading on a regulated market, pursuant to the provisions of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing the Prospectus Directive, regardless of the date of application of such regulation."

[2] Circular CaB 98/7 - Annex IV: "(…)The basic prospectus/listing particulars supporting the issue programme approved by the Luxembourg Stock Exchange or by the "Commissariat aux Bourses" (Exchange Supervisory Authority), as the case may be, can be used for admission to official stock exchange listing or the public offer of debt securities and/or warrants issued under a programme for a period of twelve months as of the date of the basic prospectus/listing particulars."

[3] Article 3.3.: "1. The application for admission to official stock exchange listing shall concern the maximum number or an unlimited number of securities that may be admitted to official stock exchange listing at any time under a programme. In the event that the application for admission of the programme is approved, all the securities which may be issued under the programme within 12 months shall be admitted to official stock exchange listing, subject to

- the receipt of the supplement in writing;

Furthermore, it should be stressed that the prospectuses drawn up and approved in accordance with the transitional provisions cannot benefit from the European passport nor be used for an offer to the public in Luxembourg (after 1 July 2005). The latter point is due to the fact that the transitional regime only applies to issues followed by an admission on a regulated market. Similarly, the supplements to be drawn up, where applicable, for a prospectus approved under the Grand-Ducal regulation of 28 December 1990 and/or the CaB circulars shall be drawn up and approved according to the same provisions.

10. Can base prospectuses approved under the former regulations be used to issue fungible tranches?

Apart from the transitional provisions as explained above, it is not possible to issue further tranches (even if fungible with tranches issued at a later stage) under a former base prospectus (dated before 1 July 2005) as the base prospectus is no longer valid for issues of tranches neither under the former, nor under the new regime.

Fungible tranches will be issues based on a new prospectus in accordance with the Prospectus Law by appending or incorporating by reference the general terms contained in a former base prospectus to the "final terms" filed in accordance with the new regime.

11. What are the CSSF's guidelines for the drawing-up of the base prospectuses and the final terms?

The CSSF's approach is to let issuers decide on the level of information they include in the base prospectus or in the final terms respectively, without prejudice however to the regulations in force. Here are some general principles:

- a base prospectus shall not be completely empty of substance. A minimum of information shall thus be included in the prospectus in order to comply with the requirements laid down by the Prospectus Directive and the Prospectus Regulation;

- any piece of information that must be approved shall be included in the base prospectus and in the supplements (where applicable). The final terms shall only contain information that is not expressly subject to approval. Therefore, information

- the receipt, where applicable, pursuant to article 6 of this chapter, of any additional prospectus drawn up in accordance with the legal and regulatory provisions in force.

2. A new application for admission shall be filed for securities issued above the maximum amount admitted to the official stock exchange listing or issued more than 12 months after the publication of the base prospectus."

that must be included in a registration document shall not be incorporated in final terms;

- any information that is not included in the base prospectus shall be defined in the final terms;

- the final terms shall only contain the information items from the various securities note schedules according to which the base prospectus is drawn up (article 22.4 of the Prospectus Regulation);

- the supplement only amends or updates the general information given in the base prospectus and shall not be used to describe or issue a specific tranche; and

- the issue of securities through financial vehicles guaranteed by underlying assets can be made through securities note schedules relating to the securities together with a registration document and a summary. In these events, the document shall be considered together for approval by the CSSF. This technique could replace the programme structure used previously by certain issuers by allowing them to benefit from similar conditions.

In this context, the CSSF welcomes the efforts of ICMA for elaborating two "pro forma" models of the final terms and accepts these formats.

12. How will the notifications and filings be made in the context of a programme?

In the context of a programme, the notification made by the competent authority of the home Member State to the competent authority of the host Member State is based on the base prospectus.

As far as the final terms are concerned, it shall be stressed that they will not be approved by the CSSF, but only filed with it (pursuant to the practical terms explained under items 2 and 7 of the second part of Circular 05/226). Article 5(4) of the Prospectus Directive (referring to its article 8(1) (a)) stipulates that the "final terms" shall be filed with the competent authority (of the home Member State). Where the securities concerned are offered to the public or their admission to trading on a regulated market is sought in another Member State, it is recommended to send a copy to the competent authority of the host Member State. The communication of the final terms can be made by the home Member State authority or directly by the issuer, offeror or person asking for the admission. Thus, where the CSSF is the host Member State, it accepts the filing of the final terms through the issuer. In general, the CSSF advises the issuer to file its "final terms" with the competent authority of the home Member State as well as with the competent authority of the host Member State.

13. Does the CSSF accept the principle of standardised prospectuses informally known as "Unitary Prospectus" or "Draw-Down Prospectus"?

In principle, the CSSF accepts, for the purpose of its approval, a standardised prospectus such as a "Unitary Prospectus" or a "Draw-Down Prospectus", relating to structured products, which incorporates by reference an extensive base prospectus. The purpose of this prospectus shall thus be mainly to describe the underlying relating to the structured product concerned. Even though it is actually a stand-alone prospectus, it will nevertheless be approved by the CSSF within the same deadlines as practised for the approval of pricing supplements under the former regulations. Indeed, as far as deadlines are concerned, the CSSF will most certainly approve these "Unitary Prospectuses" or "Draw-Down Prospectuses" in a swift manner, as they only describe an underlying and moreover (notably as regards the description of the issuer) theoretically only refer to a base prospectus that is already approved.

As far as the lumpsum fee due for the approval of such a document is concerned, it has been decided that it will be handled in the same manner as supplements. Thus, the lowest fee provided for by Grand-Ducal regulation of 10 November 2003 relating to the fees to be levied by the Commission de Surveillance du Secteur Financier as amended are due for the approval of a "(full) standardised prospectus that mainly incorporates by reference a prospectus (or a base prospectus) already approved under the provisions implementing Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market."

14. Can several base programmes be compiled in the context of "multiple issuer" programmes?

It is possible, as far as a compiled base prospectus is concerned, to completely segregate the prospectuses for the different issuers by appending them one after the other.
Another form of compilation consisting in segregating the information contained in the different base prospectuses "by definitions" (with references inside the document) is also acceptable, provided that it remains comprehensible and readable. The CSSF will analyse them on a case-by-case basis. The issuer remains free to choose the presentation mode. The compilation of several base prospectuses (multiple-issuer programmes or different programmes of the same issuer) is however only acceptable if this sort of presentation is justified and notably if a certain link exists between the companies, i.e. if they belong to a group. Furthermore, Luxembourg must of course be the home country of all the issuers described in the base prospectus.

Multiple-issuer compiled prospectuses, i.e. documents containing several base prospectuses relating to different issuers, are subject to an additional fee of 1,000

euros per additional issuer in addition to the standard fee levied for the approval of the first base prospectus.

15. What are the CSSF's requirements as regards the denomination of a base prospectus, when the latter is also used in a third country (notably the United States)?

Some countries (the United States for instance) require that documents be named according to a predefined terminology, e.g. as the notion of "Information Memorandum". Issuers seeking to draw up documents that are valid in the United States as well as in the European market may encounter problems as regards the denomination of the document. The CSSF understands that the market wishes that Luxembourg be flexible as regards the denomination of the different documents making up a prospectus. In principle, Luxembourg will adopt a flexible approach in this respect, but requires that the cover page clearly refer to the applicable provisions. Thus, it shall be clearly stated that the document concerned is to be considered as "base prospectus" under the Luxembourg law implementing the Prospectus Directive. However, as regards the designation "final terms" through the expression "pricing supplement", a more prudent approach should be adopted, as the term "supplement" implies an approval under the Prospectus Law, while the "final terms" are not approved.

16. Is it allowed to draw up a single base prospectus for securities with a view to their admission on the regulated market of the Luxembourg Stock Exchange and on the EuroMTF market?

It is possible, theoretically, to draw up a single base prospectus for both programmes (relating to the regulated market and the EuroMTF market), provided that the document remains easily analysable and comprehensible.

17. Can securities be admitted to EuroMTF and as well be considered as listed pursuant to Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on these securities?

Yes, this is now possible under the new version of the rules and regulations of the Luxembourg Stock Exchange – please refer to Chapter XII of the rules and regulations approved by the ministerial order of 29 June 2005 approving the rules and regulations of the Luxembourg Stock Exchange published in *Mémorial* A – no. 99 of 12 July 2005. Pursuant to article 1 of Chapter XII, this chapter concerns the admission requirements for financial assets that are admitted or have been the object of an application for admission to the official listing of the Luxembourg Stock Exchange and the rules governing the admission of these financial assets to trading on

a market operated by the Luxembourg Stock Exchange. Thus, an application for admission to trading on a market operated by the Luxembourg Stock Exchange filed with the latter pursuant to its rules and regulations is simultaneously considered as an application for admission to official listing. At the request of the issuer or the person asking for admission to trading, a financial asset my be excluded from admission to official listing. The admission of financial assets to trading on a regulated market is governed by sections 1 and 2 of sub-chapter 2 of Chapter XII and sub-chapter 3 of Chapter XII. The admission of financial assets to trading on a market regulated by the Luxembourg Stock Exchange (i.e. the new EuroMTF market) is governed by sections 3 and 4 of sub-chapter 2 and by sub-chapter 3 of Chapter XII.

Furthermore, it should be borne in mind that the CSSF considers the new EuroMTF market operating with the Luxembourg Stock Exchange as a "regulated" market (not under the terms of MIFID), which is regularly operating, recognised and open to the public. The securities and money market instruments traded on the EuroMTF market are eligible investments for undertakings for collective investment under Part I of the law of 30 March 1988, respectively of the law of 20 December 2002 concerning undertakings for collective investment.

18. What is the definition of a closed-end UCI under the Prospectus Law?

A UCI is considered to be of the closed-end type under the Prospectus Directive if the investor has no repurchase right. This definition is specific to the prospectus regulations 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 Prospectus Law) and allow the repurchase of the securities, the CSSF could in principle, for the purpose of the Prospectus Law, (re)consider it as an open UCI.

19. What is the difference between the obligation to publish a "supplement" to the prospectus and the publications relating to "price sensitive information"?

For securities that have been listed under the former regulations and which have not matured yet, a notice as referred to under the rules and regulation of the Luxembourg Stock Exchange (relating to "price sensitive information") shall still be published. This general rule also applies to the new regime. A prospectus is always published for a specific purpose. After the admission of an issue to trading on a regulated market, the provisions governing the ongoing obligations define the means of information of the investors. Except for supplements relating to a base prospectus for a programme (which can/must be approved for the period of validity of the programme concerned), no "supplement" will be "approved" by the CSSF or the Luxembourg Stock Exchange after the beginning of trading of a new security (issued as stand-alone) on a regulated market.

To that effect, the Prospectus Law specifies that a "Supplement to the prospectus" concerns "every significant new factor, material mistake or inaccuracy in relation to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins". Following the above events, the ongoing obligations of the issuer govern the publication of important information. This approach remains in principle unchanged.

In short, as far as securities listed under the former regulations are concerned, the Luxembourg Stock Exchange is responsible for following the issuers' compliance with their ongoing obligations. In practice, issuers currently submit a document explaining a "price sensitive information" to the Luxembourg Stock Exchange for informal scrutiny[4] (but neither for approval nor visa) before publishing this document in Luxembourg in accordance with the rules and regulations of the Luxembourg Stock Exchange and, where applicable, the terms and conditions of the securities concerned. The issuer is of course fully liable for the accuracy of the information concerned and its compliance with the legal and regulatory requirements. In principle, this mechanism would be valid until the maturity of the securities concerned, but the transposition of the Market Abuse and Transparency Directives into Luxembourg legislation will transfer the competence in this field to the CSSF. This transfer of responsibilities will however not alter the principles defined above.

20. At what moment do issuers need to fulfil the requirement to provide an annual document as referred to under article 14 of the Prospectus Law for the first time?

An issuer shall fulfil the requirement regarding the annual document (at least once a year) for the first time for the first full financial year that started (for the twelve months) on the date of – or after – the entry into force of the Prospectus Law. For example, for an issuer's financial year starting 1 January 2006 and closing 31 December 2006, the 2006 figures will normally be published in April 2007. In this case, if the annual document is also published in April, the latter shall contain or mention all the information published or made public by the issuer over the last twelve months, i.e. from April 2006 to April 2007. In this example, the next annual document must then be published theoretically in April 2008 at the latest.

[4] Similarly, it should be borne in mind in this context that, *a priori*, the CSSF will not check the content of advertisements published by issuers or intermediaries on securities before their use (which does not prevent the CSSF from carrying out a control afterwards, notably with a view to a possible classification of the publications concerned as "offer to the public").

21. What is the impact of the new regulations on prospectuses on the Global Depositary Receipts (GDRs)?

The principle, as before the entry into force of the Prospectus Law and the Prospectus Regulation, under which a prospectus for a GDR with a total limited amount ("Up to") may be drawn up, remains valid under the new prospectus regime. Indeed, this will allow the issuer to issue (or to withdraw from the market) GDRs (relating to the shares represented by the GDRs) without however having to draw up new prospectuses every time, provided that the maximum amount determining a maximum number of GDR is not exceeded.

22. Would it be conceivable to create GDR programmes?

Considering that GDRs are "non-equity securities", it will be possible to create GDR programmes.

23. What is the impact of the new regulations on prospectuses on GDR convertible bonds?

In this specific case, a prospectus relating to the convertible bonds must be submitted for approval. This prospectus shall also include (often by way of incorporation by reference) information relating to shares or GDRs respectively. In this context, it is acceptable to file directly for approval an "up-to" prospectus for GDRs while benefiting from the principle described under item 21, provided that the GDRs are immediately admitted to trading on the regulated market (without obligation however to immediately issue these GDRs).

24. How does the CSSF interpret the notion "entities not authorised or regulated whose corporate purpose is solely to invest in securities" (article 2.1.j. of the Prospectus Law)?

The notion of "entities not authorised or regulated whose corporate purpose is solely to invest in securities" in the definition of "qualified investors" of article 2.1.j. means that it covers "holdings 29" and may also cover Soparfis, SPVs and any other entity whose corporate purpose is solely to invest in securities (pursuant to the law – as for "holdings 29" – or pursuant to the corporate purpose specified in the articles of incorporation of the entity concerned.)

25. On what conditions does the CSSF transfer the prospectus approval to the competent authority of another Member State pursuant to article 7.6. of the Prospectus Law?

According to article 7.6. of the Prospectus Law, the CSSF may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that authority. It has to be stressed that this transfer can only be initiated by the CSSF and not upon the request of the issuer. The CSSF will not transfer the approval of a prospectus for which it is competent to the competent authority of another Member State, except when there are reasons preventing the CSSF from approving the prospectus.

26. How does the CSSF interpret article 3 of the Prospectus Law relating to the securities denominated in a currency other than euro?

Article 3 of the Prospectus Law stipulates that "the issues and offers of non-equity securities denominated in a currency other than euro shall benefit of the same regime as those denominated in euro provided that the nominal value per unit of these securities is, at the date of issue or the offer, equivalent or nearly equivalent to the amounts in euro provided for in this law". The expression "at the date of issue or the offer" does not give a choice to the offeror, but the fulfilment of "the earlier of" these assumptions will be decisive in principle. The interpretation of the notion "nearly equivalent" will be appraised on a case-by-case basis at the very date of its appraisal.

27. What is the impact of the language regime in relation to the documents incorporated by reference?

The general language regime for Part II of the Prospectus Law is explained in detail under article 20 of the Prospectus Law.[5]

[5] Article 20 : "1. Where an offer to the public is made or admission to trading on a regulated market is sought only within the territory of Luxembourg and Luxembourg is home Member State, the prospectus shall be drawn up in a language accepted by the Commission. A prospectus drawn up in Luxembourgish, French, German, or English is acceptable in any case.
2. Where an offer to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding Luxembourg and Luxembourg is home Member State, the prospectus shall be drawn up either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission on a regulated market, as the case may be. For the purpose of the scrutiny by the Commission, the prospectus shall be drawn up either in a language accepted by the Commission or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission of the securities to trading on a regulated market, as the case may be. A prospectus drawn up in Luxembourgish, French, German, or English is acceptable in any case.

In principle, the language of a document incorporated by reference does not need to be the same as that of the prospectus (the person applying for approval to "passport" the prospectus shall however assure compliance with the language regime of the host Member State). The incorporation by reference of a document approved by the American authority SEC is thus possible under article 28 of the Prospectus Regulation (whereas the CSSF keeps the right to appraise the quality of this information). As far as the incorporation by reference of additional information is concerned (not required by the Prospectus Regulation), it must be stated explicitly in the prospectus that this information has been incorporated voluntarily to provide additional information.

Thus, nothing opposes the incorporation by reference in a prospectus of documents drawn up in different languages, provided however that they are languages accepted by the CSSF in accordance with the Prospectus Law. Nevertheless, the prospectus must comply with the general criteria of readability (i.e. that the prospectus is complete, that the information given is consistent and comprehensible).

28. What is presently the scope of article 21 of the Prospectus Law in relation to the approval for issuers incorporated in third countries of a prospectus that has been drawn up in accordance with the legislation of a third country?

According to article 21 of the Prospectus Law, if Luxembourg is the home Member State for an issuer incorporated in a third country, the CSSF may approve a prospectus for an offer to the public or for admission to trading on a regulated market, drawn up in accordance with the legislation of a third country, provided that (i) the prospectus has been drawn up in accordance with international standards set by

3. Where an offer to the public is made or admission to trading on a regulated market is sought in more than one Member State including within the territory of Luxembourg and Luxembourg is home Member State, the prospectus shall be drawn up in a language accepted by the Commission. A prospectus drawn up in Luxembourgish, French, German, or English is acceptable in any case. The prospectus shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission of the securities to trading on a regulated market, as the case may be.

4. Where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least 50,000 euros is sought in one or more Member States, the prospectus shall be drawn up either 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, at the choice of the issuer, offeror or person asking for admission of the securities to trading on a regulated market, as the case may be.

5. Where an offer to the public is made or admission to trading on a regulated market is sought within the territory of Luxembourg and Luxembourg is the host Member State, the prospectus shall be drawn up in a language accepted by the Commission. A prospectus drawn up in Luxembourgish, French, German, or English is acceptable in any case."

international securities commission organisations, including the disclosure standards of the International Organisation of Securities Commissions (IOSCO), and (ii) the required information, including information of a financial nature, is equivalent to that required under the law, and (iii) the prospectus is drawn up in a language accepted by the CSSF. It should be noted in this context that IOSCO has currently only prepared a schedule for shares (and not for bonds), so that this article is presently not yet of much practical interest.

29. What can be considered as an "equivalent document" in the context of a merger?

The purpose of this question is to clarify whether, in the context of article 5.3.c)[6] of the Prospectus Law, the draft merger terms (provided for in the law of 10 August 1915 on commercial companies as amended) is sufficient. Firstly, it should be noted that the provision 5.3.c) only applies if the merger is considered as an offer to the public of securities. Otherwise, the transaction does not fall under the scope of the Prospectus Law. Thus, the simple notification for an ordinary meeting convened to vote on draft merger terms is in principle not considered as an offer to the public.

The document relating to the draft merger terms should be considered as "equivalent". It does not need to be "identical" to a prospectus. However, all the information to be included in a prospectus, pursuant to the Prospectus Regulation, shall also be included in the document relating to the draft merger terms. The document produced pursuant to the law on Luxembourg companies cannot be considered as an "equivalent" document.

It is useful to specify that the documents mentioned under article 5.3. and especially those mentioned under b) and c)[7] do not entitle to the European passport.

[6] The obligation to publish a prospectus does not apply to offers to the public of […] « securities offered, allotted or to be allotted in connection with a merger, provided that a document is available containing information which is regarded by the Commission as being equivalent to that of the prospectus, taking into account the requirements of Community legislation on mergers".

[7] "(b) securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information which is regarded by the Commission as being equivalent to that of the prospectus, taking into account the requirements of Community legislation on takeover bids;
(c) securities offered, allotted or to be allotted in connection with a merger, provided that a document is available containing information which is regarded by the Commission as being equivalent to that of the prospectus, taking into account the requirements of Community legislation on mergers;"

30. Is there a mandatory structure or a predefined order for certain information that has to be included in a prospectus?

Article 26 of the Prospectus Regulation on the structure of the base prospectus and the final terms defines the order for the following information in its first paragraph:

1) a clear and detailed table of contents;
2) the summary provided for in article 5 (2) of Directive 2003/71/EC;
3) the risk factors linked to the issuer and the type of security or securities covered by the issue(s);
4) the other information items included in the schedules and building blocks according to which the prospectus is drawn up."

The second paragraph of article 26 (which limits the scope of the first one by imposing an important exception to the order laid down in paragraph 1) is worded as follows: "Notwithstanding paragraph 1, the issuer, the offeror or the person asking for admission to trading on a regulated market shall be free in defining the order in the presentation of the required information items included in the schedules and building blocks according to which the prospectus is drawn up. The information on the different securities contained in the base prospectus shall be clearly segregated."

The interpretation of paragraphs 1 and 2 of article 26 allows to draw the following two principles:

(a) the term "notwithstanding" of the second paragraph may be interpreted in such a way that the risk factors, due to the fact that they are required by the schedules and building blocks, must not necessarily be directly included after the summary; and

(b) other information, which is not required by the schedules and building blocks, can be inserted between the table of contents and the summary or elsewhere.

Paragraphs 3 and 4 of article 25 of the Prospectus Regulation allow for a similar flexibility.

31. How shall issues of the types "repackaging", "fiduciary notes" or "loan participation agreement" be classified under the Prospectus Regulation?

Securities that are in fact only a simple "mirror" of the underlying security (such as GDRs or FDRs) are considered as "representative certificates" of the underlying securities. Where the underlying is in fact a pool of different assets, these securities shall be considered as "asset backed securities". An asset pool that consists in loans among entities of the same group shall not be considered as an underlying of an "asset backed security".

In relation to fiduciary issues, the provisions of the law of 27 July 2003 relating to trusts and fiduciary contracts provide that the information to provide on the fiduciary are always those that are required for the issuer in the annexe concerning representative certificates.

32. How shall "tier 1"issues be classified under the Prospectus Regulation?

For the purpose of the drawing-up of a prospectus, the CSSF does in principle not change its approach relating to "tier 1" issues of the "Trust Preferred Securities" type, i.e. it considers them as bonds instead of equity shares, subject of course to a case-by-case appraisal according to the structure of the specific issues. If no voting right is attached to the security and it is not a convertible security, it is considered as a bond. If that is not the case, the decision has to be taken on a case-by-case basis according to the structure of the security.

33. Are there any transitional provisions in relation to the IAS standards?

Article 35.3 of the Prospectus Regulation lays down under item 1) that "Until 1 January 2007 the obligation to restate in a prospectus historical financial information according to Regulation (EC) No 1606/2002, set out in Annex (…) shall not apply to issuers from third countries (…) who have their securities admitted to trading on a regulated market on 1 January 2007. The reference "on 1 January 2007" shall be understood as meaning "**before** 1 January 2007".

34. Which accounting standards are presently considered as being equivalent to the IAS standards?

The Prospectus Regulation requires issuers of securities admitted to trading on a regulated European market to draw up their statements according to the IAS/IFRS accounting standards or according to the national accounting standards of non-EU countries provided that these standards are considered as being equivalent to the IAS/IFRS accounting standards. CESR considered that the standards applicable in Japan, the United States and Canada can be considered as being equivalent to the IAS/IFRS standards under certain conditions.

As the Prospectus Regulation provides for a transitional provision in article 35.3, this issue will arise more extensively after 1 January 2007 and with the transposition of the Transparency Directive and will be settled in that context.

35. What is the impact in practice of article 35.3 of the Prospectus Regulation on the transitional provisions as regards historical financial information?

Article 35.3 of the Prospectus Regulation provides that:

"Until 1 January 2007 the obligation to restate in a prospectus historical financial information according to Regulation (EC) No 1606/2002, set out in Annex I item 20.1, Annex IV item 13.1, Annex VII items 8.2, Annex X items 20.1 and Annex XI item 11.1 shall not apply to issuers from third countries:

1. who have their securities admitted to trading on a regulated market on 1 January 2007;
2. who have presented and prepared historical financial information according to the national accounting standards of a third country.

In this case, historical financial information shall be accompanied with more detailed and/or additional information if the financial statements included in the prospectus do not give a true and fair view of the issuer's assets and liabilities, financial position and profit and loss."

It has to be stressed that the transitional provisions as regards historical financial information do not cover all the annexes and that those mentioned in article 35.3. rather concern retail securities. The relating annexes require, in the absence of any IAS equivalence, a restatement of the financial information of the third country issuers. Item 20.1 of annexe 1 provides for instance that "For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements". However, it should be underlined that the reference "on 1 January 2007" in article 35.3. of the Prospectus Regulation is understood as meaning "**before** 1 January 2007". Issuers are thus required to present their reprocessed financial information only from 2007.

As regards the annexes that are not covered by the transitional provisions of article 35.3. of the Prospectus Regulation (concerning in principle wholesale deals), Annexe IX for instance provides under item 11.1:

"For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. Otherwise, the following information must be included in the registration document:

(a) a prominent statement that the financial information included in the registration document has not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 been applied to the historical financial information;

(b) immediately following the historical financial information a narrative description of the differences between the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and the accounting principles adopted by the issuer in preparing its annual financial statements. (…)"

It may be underlined that the declaration referred to under (a) should not be a problem for issuers and that the description referred to under (b) will in principle be based on a standard document (stating the relevant differences in an abstract manner only and not requiring any restatement of individual information). It should be borne in mind in this context that the existing **accounting standards** in the United States, Canada and Japan are considered, on certain conditions, as being equivalent to those in force at European level.

As regards the **audit standards** (in relation to which no transitional provisions exist), item 11.1 of Annexe IX stipulates that:

"The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the registration document:
(a) a prominent statement disclosing which auditing standards have been applied;
(b) an explanation of any significant departures from international standards on auditing."

In this context, item 20.1 of Annex I strictly stipulates that:

"The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard."

36. Is a guarantor automatically obliged to produce statements under IFRS?

In principle, a guarantor shall provide the same information in the prospectus as the issuer. As regards companies from an EU Member State, it has to be understood that a company which is guarantor in a prospectus in relation to securities does not need to prepare its figures according to the IFRS standards only because this company is

guarantor in relation to these securities. In other words, a guarantor whose securities are not admitted to trading on a regulated market is not required to prepare consolidated accounts under IFRS (except obviously if the national legislation imposes these standards). Its position as guarantor of securities offered to the public in Luxembourg or admitted to trading on a regulated market does indeed not entail the independent obligation to prepare the consolidated accounts under IFRS.

37. On which conditions do cash flow statements need to be included in a prospectus?

As regards the requirement to include a cash flow statement in a prospectus, the Prospectus Regulation provides notably in its Annexe IV (schedule relating to the registration document for debt and derivative securities with a denomination per unit of less than EUR 50,000) that if the historical financial information "*is prepared according to national accounting standards, the financial information required under this heading must include at least: (a) balance sheet; (b) income statement; (c) cash flow statement; and (d) accounting policies and explanatory notes. The historical annual financial information must have been independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.*"

In this context, a first question arises as to whether an issuer, or a guarantor respectively, that is not obliged to prepare cash flow statement pursuant to its national accounting standards (and which consequently has not prepared one), should provide such a statement, considering that solely the schedule of the Prospectus Regulation lays down this requirement (through the provisions on historical financial information to include in the prospectus). A second question arises concerning the audit of the cash flow statement by the auditor of the issuer (or of the guarantor).

The CSSF considers that in principle, the issuer (or the guarantor) shall prepare a cash flow statement if required so by the applicable schedule of the Prospectus Regulation and that this cash flow statement must have been audited or reported on by the auditor (without him being obliged to confirm that the statement gives a true and fair view)[8]. The prospectus should contain the statement as well as the comment of the auditor.

[8] The wordings that have been accepted by the CSSF in the past are for example the following : "*At the request of X, the independent auditor of X has compared the amounts included in the above table not derived from the audited non-consolidated financial statements and/or unaudited non-consolidated interim financial statements and/or X accounting records with the corresponding amount in schedules and analyses prepared by X from its accounting records and found them to be in agreement after giving effect to rounding, if applicable.* » or at least « *The cash flow table for the financial years 2004 and 2003 which is based on the audited financial data of the said years and of which the method of calculation and the calculations themselves have been approved by the Issuer's auditors, can be found hereunder: (…)*".

This principle is still valid, except if, by way of derogation, the issuer (respectively the guarantor) is able to clearly demonstrate that it is an information item that is not relevant for this particular case. Indeed, article 23, item 4 of the Prospectus Regulation stipulates that "*By way of derogation of Articles 3 to 22, in the cases where one of the information items required in one of the schedules or building blocks referred to in 4 to 20 or equivalent information is not pertinent to the issuer, to the offer or to the securities to which the prospectus relates, that information may be omitted*." It is the issuer's (or the guarantor's) task to provide, in the context of the approval of its prospectus, a clear explanation of the reasons justifying the application of article 23 item 4 to its case. The CSSF could require that the auditor gives his view on this explanation. In principle, the issuer shall include the useful explanations in the prospectus.

It is important to remember in this context that article 23 (4) cannot be enforced as a whole and automatically to certain categories of issuers or issues.

38. Does the professional body of the statutory auditors have to be stated every time?

As far as statutory auditors are concerned, the Prospectus Regulation clearly requires, besides the name and address of the issuer's auditors, that the membership in a professional body be indicated. Thus, as regards Luxembourg auditors, the *Institut des réviseurs d'entreprises* (IRE) shall be mentioned. In respect of England and Wales, it will be sufficient that the statutory auditors indicate that they are chartered accountants (as understood by the Institute of Chartered Accountant in England & Wales).

39. What are the fees to be paid for the approval of a prospectus?

The Grand-Ducal regulation of 10 November 2003 relating to the fees to be levied by the Commission de Surveillance du Secteur Financier, as amended notably by the Grand-Ducal regulation of 3 August 2005 relating to the prospectus for securities (Mémorial A – No 143 of 2 September 2005) introduces the rate of the lumpsum fees the CSSF levies on the persons asking for admission to trading on a regulated market[9], offerors or issuers seeking approval of a prospectus under Part II and Chapter 1 of Part III of the Prospectus Law. Through the introduction of a new section H. in article 1 "Lumpsum fees" of Grand-Ducal regulation of 10 November

[9] In this context, a distinction is to be made between the persons asking for admission to trading on a regulated market and the above-mentioned listing agents who introduce the applications for admission in their capacity as proxies of the issuer or of the person asking for admission.

2003, the above persons are liable for fees (of an amount either of EUR 2,500, EUR 2,000 or EUR 1,500 depending on the nature of the prospectus) in relation with the document submitted for approval to the CSSF.

As regards more particularly closed-end UCIs (governed by the Prospectus Law), it seemed fit to specify under section C. “Undertakings for collective investment” of article 1 of the Grand-Ducal regulation of 10 November 2003 that closed-end Luxembourg and foreign UCIs only need to pay the “prospectus fee” for the scrutiny of each application for authorisation or approval of their prospectus (due pursuant to the new section H). Furthermore, it should be noted that in the context of a notification by the competent authority of the home Member State under article 18 of the Prospectus Law and in relation to a closed-end UCI, no fee will be levied in Luxembourg, owing to the fact that article 18 provides, among other things, that in these cases, the CSSF does not initiate neither approval procedures nor any administrative procedures regarding these prospectuses.

40. Who are the contact persons for further information?

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41. Exchange of securities following registration with the SEC

Some issuers seek admission to the regulated market of the Luxembourg Stock Exchange for securities that have not been registered with the SEC (and to which transfer restrictions therefore apply). These issuers then plan to register documentation in respect of those securities with the SEC and finally offer the registered securities to the investors in exchange for the non-registered securities. Under the former legislation, the CSSF argued that as far as such an "exchange offer"

was concerned, it was not necessary to draw up a new prospectus, provided the first prospectus already specified the consequences and terms of this exchange. It should be stressed however that a certain lapse of time may pass between the admission in Luxembourg of the initially non-registered securities and their registration with the SEC, that the issuer normally draws up a new prospectus for the SEC (which is up-to-date on the date of the exchange offer and may contain new significant information), that the initial and the registered securities are not, legally speaking, identical (the same conditions apply except for the issue date and the transfer restrictions). Given the foregoing and provided that the prospectus approved for the admission to trading of securities, which is not registered with the SEC already states the terms and conditions of the securities offered in exchange and of the offer itself, under the new regime of the Prospectus Directive, the CSSF considers that where a new significant event has occurred, a supplement to the approved prospectus shall be drawn up by the issuer and approved by the CSSF for the admission to trading of the registered securities at the regulated market of the Luxembourg Stock Exchange (and/or for the public offer of exchange, if necessary). This supplement shall be drawn up in accordance with article 13 of the Prospectus Law and may incorporate by reference parts of the documentation registered with the SEC. Where no supplement needs to be drawn up (as there is no significant new information), the information on the exchange (such as the number of securities exchanged and the ISIN number of the registered securities) shall be filed in Luxembourg and published in accordance with article 10 of the Prospectus Law.

42. Bonds issued within a programme under previous legislation but not listed

A Pricing Supplement documenting a tranche of bonds under an Offering Circular of a programme drawn up under previous legislation, which, at that time, were not listed on the Luxembourg Stock Exchange, may, in principle, be annexed to the Final Terms (issued under a PD-compliant base prospectus), in order to be granted admission to the regulated market of the Luxembourg Stock Exchange for that tranche. (This solution is similar to the answer to Question 10 in the “40 FAQs".

43. Incorporation by reference

Where a document is incorporated by reference, the prospectus shall specify that the pieces of information that are not mentioned in the cross reference list are incorporated for information purposes only. This is necessary to ensure that the incorporation meets the criteria of the Prospectus Law requiring that it is readily understandable and clear (as the CSSF allows issuers to provide for a cross reference list that is non-exhaustive with respect to with the documents incorporated by reference).

44. International public bodies

Article 4.2 of the Prospectus Law specifies that Part II does not apply, among others, to “non-equity securities issued by a Member State or by one of a Member State’s regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States.” Issuers that claim to be international public bodies shall produce evidence thereof and confirm the above, in principle, in the prospectus.

45. Multiple-issuer programmes

It has already been explained that the compilation of several base prospectuses (multiple-issuer programmes or different programmes of the same issuer) is only acceptable if this sort of presentation is justified and notably if a certain link exists between the issuers (i.e., as far as companies are concerned, if they belong to the same group). Issuers that wish to set up multiple-issuer programmes shall therefore produce evidence of such a link justifying the drawing-up of a common prospectus in their particular case. The CSSF will assess this justification on a case-by-case basis in the light of the regulations on prospectuses and the presentation of the information.

46. The denomination of a prospectus

Following the first indications regarding the denomination of a prospectus used both in the United States and in Europe, it has been decided that a comment stating that “this offering memorandum comprises a prospectus for the purposes of Article 5.4 of the Prospectus Directive" on the cover page of a US Information Memorandum is also considered acceptable and sufficient by the CSSF.

47. Changes to the terms and conditions in the context of a Base prospectus / final terms programme

The principles that apply to the change of the terms and conditions within the context of a programme may be summarised as follows:

(i) Final terms may not change the terms and conditions of the programme (as contained in the base prospectus) in general and for future tranches (but only for the tranche issued under the relevant final terms). A “supplement” must therefore be used to change the general terms of a programme.

(ii) Final terms may introduce changes to the terms and conditions for their tranche (and thus for a particular trade), but they should not be used if entirely different

conditions apply to this tranche (the use of a unitary prospectus would be more appropriate in this case).

48. Annexe XII of the Prospectus Regulation

Whereas the schedule of the note for derivative securities applies to all the bonds with a maturity repayment different from 100% (which, economically speaking, may however not generally be considered as derivatives), the various items of Annexe XII, which would possibly require inappropriate information (i.e. on the underlying), do quite simply not apply in such cases.

49. Presentation of the annual accounts and the annual report

Regarding the presentation of historical financial information covering two financial years, the annual accounts (tables and annexes) for two different financial years may be presented in the same document.

50. Financial instruments not covered by the Prospectus Directive

While an issuer may in principle issue, under a base prospectus approved according to Part II of the Prospectus Law, securities that do not fall under the scope of this Part, the CSSF may, in these special cases, require this issuer to include a comment similar to the following in his base prospectus in order to clarify the scope of the approval:

"Under the Luxembourg Law on Prospectuses for Securities which implements the Prospectus Directive, prospectuses relating to money market instruments having a maturity at issue of less than 12 months and complying also with the definition of securities are not subject to the approval provisions of Part II of such law."

Considering however that it is mainly the issuer who is concerned by this clarification, the CSSF will in principle not require the inclusion of this comment in the prospectus, which provides information intended for investors, but may remind the issuer or its counsels of the scope of the prospectus' approval (by phone, mail or any other means).

51. Fiduciary Notes representing a bond issue under the Luxembourg law / the Prospectus Regulation

The Annexes to the Prospectus Regulation mentioned below shall be used for a prospectus relating to fiduciary notes where, for instance, BankX issues fiduciary

notes representing a loan of the company YCorp (and with a denomination per unit of at least EUR 50,000):

- Annexe XIII: securities note to be used for the description of the terms relating to fiduciary notes issued by BankX;
- Annexe XIII, section 4 to be used only for the description of the requirements of the underlying loan of YCorp;
- Annexe IX: the registration document applying to the description of the "underlying issuer" YCorp; and
- Annexe X, section 26 for the issuer of the fiduciary notes (BankX).

52. Financial information of an SPV

In principle, an SPV (special purpose vehicle) issuing securities shall include audited figures in the prospectus relating to these securities. It is important to understand in this context that an SPV issuing ABS (asset backed securities) shall draw up a prospectus based, among other things, on Annexe VII, which expressly specifies in point 8.1. that: "Where, since the date of incorporation or establishment, an issuer has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect shall be provided in the registration document." Where the SPV has not commenced operations, it is not obliged to draw up a balance sheet (and item 8.2. on historical financial information does not apply). The commencement of the SPV's « operations » concerns its core business and shall be assessed taking account of its business purpose. Thus, for example, the generation of minor costs is not likely to constitute a start of the SPV's operations.

Article 10, paragraph 2 of the Prospectus Regulation provides that: « When Luxembourg is home Member State, the Commission may authorise the omission from the prospectus of certain information provided for by law, if it considers that: (…) c) such information is of minor importance only for a specific offer or admission to trading on a regulated market and is not such as to influence the assessment of the financial position and prospectus of the issuer, offeror or guarantor, if any. It should be stressed in this context (i) that this exemption may only be granted where the issuer submits a written reasoned request and (ii) that the fact that the exemption was granted will be mentioned by the CSSF in the certificate notified to the competent authorities of the other Member States. As regards more specifically SPVs (to which Annexe VII does not apply as they do not issue ABS), the latter may submit a reasoned request for exemption as regards their first annual accounts. The request for exemption shall contain precise arguments according to which, in their specific case (issuer's business, nature of the securities), this information would be of minor importance (notably if the issuer has not yet commenced its operations). If the request is duly justified, the CSSF will grant the exemption.

53. "New Hampshire" Statement

It is still possible to include such a clause in a prospectus after the cover page.

54. Supplement and annual accounts

It is impossible to incorporate future financial information by reference under Part II of the Prospectus Law. The issuer shall draw up a supplement relating to its base prospectus, every time it is of the opinion that the financial information concerned are to be considered as new significant events.

On the other hand, under the regimes of Part III (and Part IV) of the Prospectus Law, it is possible to incorporate future financial information by reference. Article 36 of Part III of the Prospectus Law thus provides that "Information may be incorporated in the simplified prospectus by reference to one or more previously, simultaneously, or subsequently published documents."

55. Publication of the prospectus: article 16 of the Prospectus Law

According to article 16. 2. of the Prospectus Law, a prospectus is deemed available to the public when published either:

a) by insertion in one or more newspapers circulated throughout, or widely circulated in the Member States in which the offer to the public is made or the admission to trading is sought, or

b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents, or

c) in an electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents, or

d) in an electronic form on the website of the regulated market where the admission to trading is sought; or

e) in an electronic form on the website of CSSF (respectively on that of the Luxembourg Stock Exchange under article 16. 4).

Thus, for example, if bonds are to be offered to the public in a Member State other than Luxembourg, where this State is also home Member State, if these bonds are also admitted to trading on a regulated market in this Member State and where these

bonds benefit from the "European passport" in order to be offered to the public in Luxembourg (but will not be admitted to trading on the Luxembourg regulated market), the publication of a prospectus on the website of this regulated market is sufficient under article 16 of the Prospectus Law for the purpose of the offer to the public in Luxembourg. In other words, the different means of publication of article 16. 2. set down in the Prospectus Law should be taken literally and notably sub-paragraph "d) in an electronic form on the website of the regulated market where the admission to trading is sought" entails that the obligation to publish a prospectus (containing the terms of the offer to the public in Luxembourg, respectively in respect of which a supplement is published) is fulfilled by the publication of the prospectus on the website of the (non Luxembourg) regulated market where the admission to trading is sought.

56. Publication of the prospectus: article 10 of the Prospectus Law

Article 10(1) of the Prospectus Law provides that (i) where the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus and that (ii) when Luxembourg is home Member State, the final offer price and the amount of securities (i) must be filed with the CSSF and (ii) will be published in accordance with the arrangements provided for in article 16. 2. of the Prospectus Law.

Where an offer to the public is made in Luxembourg and where Luxembourg is not home Member State, such a notice shall also be notified to the CSSF (and published in Luxembourg if the requirements laid down in article 16. 2. are not yet fulfilled otherwise). The procedure to follow in order to fulfil this requirement is the same as for final terms.

57. Securities of the same class

Item 6.2. of Annexe XII (derivative securities) of the Prospectus Regulation provides that "all the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading shall be stated." As regards this particular point, "same class of securities" shall not be understood as meaning that all issues of this issuer must be stated, but that only the securities of the issue described in the prospectus concerned or fungible securities with these securities, are concerned.

58. Securitisation funds

The scope of Part II of the Prospectus Law is defined under article 4 while article 29 defines the scope of Part III. As regards Part II, the financial instruments to which

Part II does not apply are listed un paragraph 2 of article 4 of the Prospectus Law. It notably lays down that the units issued by UCIs other than the closed-end type are not covered by Part II. Part III applies to the securities and other comparable securities to which Part II does not apply, notably those listed in article 4. 2., except however for the units issued by UCIs of the open-end type that are governed by the sole provisions of the laws of 30 March 1988 and 20 December 2002 concerning undertakings for collective investment. It should be noted that the exception relating to the scope of Parts II an III of the Prospectus Law applies, in principle, only to UCIs of the open-end type that are governed by the sole provisions of the laws of 30 March 1988 and 20 December 2002 concerning undertakings for collective investment. Thus, the securities representing the investors' rights on a securitisation fund subject to the law of 22 March 2004 on securitisation remain in principle subject to Part II of the Prospectus Law.

For the sole purposes of the drawing-up of a prospectus and the choice of an Annexe of the Prospectus Regulation applicable to securities issued by a securitisation fund, the CSSF considers them in principle, given the inherent specificities of these structures, as non-equity securities (subject of course to a case-by-case appraisal according to the structure of the specific securitisation funds). By way of exception to the general principle, for a securitisation fund with characteristics similar to those of a closed-end UCI, Annexe XV of the Prospectus Regulation (relating to the minimum information to include in the registration document relating to the securities issued by the undertakings for collective investment of the closed-end type) shall be used. The general principle according to which the securities issued by a securitisation vehicle shall be considered as non-equity securities, is strictly limited to the securitisation funds governed by the law of 22 March 2004 on securitisation and to the sole purpose of drawing up a prospectus according to the Annexes to the Prospectus Regulation.

59. Notifications under a programme (European passport)

The CSSF considers that the approval of a base prospectus by the competent authority of the home Member State (and its notification by the latter to the competent authority of another Member State) is valid for the whole issue of tranches under this programme covering securities listed under point (m) (ii) of article 2.1. of the Prospectus Directive (and documented by final terms which will not be approved). Therefore, where the issuer plans to make an offer to the public for a specific tranche under the programme, exclusively in a Member State other than the home Member State of the programme (without specific additional action relating to this tranche in the home Member State of the programme), this other Member State does not become home Member State for the issue covered by the programme. This specific operation will be covered by the notification made on the base prospectus by the home Member State.

It should be borne in mind in this context, that the CSSF advises the issuer to file its "final terms" with the competent authority of the home Member State as well as with the competent authority of the host Member State.

The issues that can be made by means of "Unitary Prospectus" are on the other hand considered like stand-alone issues, notably as regards the definition of the home Member State, the approval and the relating notification. This entails the authority competent for the approval of the base prospectus incorporated by reference can be different from the one that will be competent for the approval of the Unitary Prospectus.

60. Obligations relating to one or several foreign underlying funds

Under the former legislation (before the transposition of the Prospectus Directive in Luxembourg and the direct applicability of the Prospectus Regulation), foreign UCIs not subject to a supervision in their home country as well as structured products linked to such UCIs were not admitted to the listing on the Luxembourg Stock Exchange (until 2004) and could certainly not be offered to the public in Luxembourg. Thus, when the foreign funds underlying these instruments were not submitted to a permanent supervision in their home State, they could be offered in Luxembourg only if they are 100% principal-protected.

This approach has become obsolete under the new prospectus regime, as these classes of securities are covered by the Prospectus Directive.

61. Financial information of an SPV (Special purpose vehicle)

Q&A No 52 relating to "Financial information of an SPV" provided in the document "60 FAQs", published on www.cssf.lu, stresses that a distinction must be made between, on the one hand, SPVs issuing ABSs (Asset Backed Securities) to which applies, among others, point 8.1. of Annexe VII to the Regulation (EC) No 809/2004 (the **Prospectus Regulation**), and, on the other hand, the other SPVs that can, where applicable, submit a reasoned request for exemption with respect to the preparation of their first annual accounts under the provisions of article 10 of the law of 10 July 2005 on prospectuses for securities (the **Prospectus Law**). The CSSF wishes to stress that where such a duly justified request for exemption is received, the exemption can be granted.

However, Q&A No 52 does not address the comparative interpretation of the formulation of points 8.1. and 8.2. of Annexe VII relating to ABSs in the following two situations:

- the issuer has not commenced operations and no financial statements have been made up as at the date of the registration document;
- the issuer commenced operations and financial statements have been made up since the date of incorporation or establishment.

Indeed, Annexe VII does not consider the situation in which the issuer of the ABSs has commenced operations but has not drawn up financial statements since the date of incorporation or establishment. In this particular case, the CSSF adopted the "either/or" approach for the exemption referred to in point 8.1. of Annexe VII. Thus, where the issuer has already commenced operations, but not drawn up financial statements since the date of incorporation or establishment, a statement clarifying that fact must be included.

62. Exchange offers related to securities admitted to trading on the Euro MTF market that are likely to trigger an offer to the public

Exchange offers related to securities admitted to trading on the Euro MTF market for new securities shall be considered as price-sensitive transactions impacting the securities concerned and must be made public in accordance with the Rules and Regulations of the Luxembourg Stock Exchange. The notices relating to these exchange offers could be considered as constituting offers of securities to the public and trigger the obligation to publish a prospectus in accordance with the Prospectus Regulation. In this case, a distinction must be made between notices that generally aim to inform the public of an issuer's debt restructuring through an exchange offer (which are not offers to the public of new securities) and specific invitations to the public to participate in this exchange offer (which can constitute an offer to the public). While the notices on an issuer's debt restructuring can and must be published, invitations to take part in an exchange offer may for instance be addressed to investors concerned *via* the clearing system, in order to avoid that these invitations are immediately considered as offer to the public, without prejudice however to the definition of an offer to the public and the conditions governing the publication of a prospectus as provided for by the Prospectus Law and explained in circular CSSF 05/225.

63. Multiple-issuer programmes and article 13.2 of the Prospectus Law

According to article 13.1 of the Prospectus Law, "Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus". Article 13.2 of the law sets up a period called cool-off period by laying down that the "investors who have

already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within a time limit which shall be no shorter than two working days after the publication of the supplement, to withdraw their acceptances". In the case of multiple-issuer programmes, the base prospectus includes information on several issuers. Where a supplement to the prospectus that only concerns one issuer of the programme must be published and where the information included in this supplement is such as to influence only the assessment of the securities issued by this particular issuer, the CSSF considers that the publication of the supplement does not affect the issues of the other issuers.

64. Financial information to provide under an issue guaranteed by several companies belonging to the same group (e.g. High Yield Bond Issuers)

Where an issue of securities is guaranteed by several companies, Annexe VI of the Prospectus Regulation applies in principle to each of these entities. The provisions concerned require that the guarantor discloses the same information on itself as if it was the issuer of the security that is the object of the guarantee. However, a strict application of this point would be likely to prejudice issues that benefit from more complex structural guarantees under which several subsidiaries of the same group are guarantors, in particular where these subsidiaries do not publish non-consolidated financial statements separately from the consolidated financial statements of the group to which they belong. This is notably the case for so-called "High Yield Issues". In these constellations, it is often the group's subsidiaries which have the most significant assets that act as guarantors. As it cannot be affirmed in general that the financial statements of the subsidiaries are always of minor importance, the CSSF considers that an exemption can nevertheless be granted on a case-by-case basis in the following practical situations:

- the guarantees concerned are unconditional and irrevocable (without prejudice to the other legal provisions applicable in the jurisdictions of these entities);
- the guarantor subsidiaries represent at least 75% of net assets or of the group's EBITDA; and
- the prospectus includes a description of the reasons explaining the omission of separate financial information for the subsidiaries concerned under the section relating to risk factors.

In these cases and provided that an exemption request is received, the inclusion of the group's consolidated financial statements will be considered sufficient by the CSSF as historical financial information required for the group and the guarantor subsidiaries.

65. Specialised investment funds and the law on prospectuses for securities

The law of 13 February 2007 on specialised investment funds (**SIF Law**) states that specialised investment funds (**SIFs**) may take the form of an open-end or closed-end UCI. Article 52(3) provides that where a prospectus has been published in accordance with the Prospectus Law, there is no further obligation to establish a document within the meaning of the SIF Law (an exemption in a converse situation is not provided for by this article).

The scope of Part II of the Prospectus Law (which applies to offers to the public of securities and to admissions of securities to trading on a regulated market subject to Community harmonisation and implementing the rules of the Prospectus Directive) is defined in article 4 of the Prospectus Law, whereas article 29 defines the scope of Part III of the Prospectus Law (which lays down the Luxembourg rules that apply to offers to the public (Chapter 1) and to admissions to trading on a regulated market (Chapter 2) of securities and other comparable securities which are outside the scope of the Prospectus Directive and providing for a simplified prospectus regime):

- As regards Part II, financial instruments not concerned by the rules applicable to the offer to the public under this Part II are listed under paragraph 2 of article 4 of the Prospectus Law. This paragraph specifies in particular that the units issued by UCIs other than the closed-end type do not fall under Part II. Hence, closed-end UCIs must establish a prospectus under Part II of the Prospectus Law. Moreover, article 63 of the Prospectus Law amended, among others, the laws of 30 March 1988 and of 20 December 2002 on undertakings for collective investment in order to clearly define that the obligation to publish a prospectus within the meaning of these laws is not applicable to closed-end undertakings for collective investment. In this context, it should be highlighted that a closed-end UCI under the Prospectus Law is defined as a UCI for which investors do not have any repurchase rights relating to the units concerned. All other cases, regardless of the number and periodicity of possible repurchases, concern open-end UCIs not falling under Part II of the Prospectus Law (please also refer to definitions of article 2.1(m) and (n) of the Prospectus Law and Q&A No 18).

We may also highlight in this context that according to article 5.2 the obligation to publish a prospectus for an offer to the public is not applicable to certain categories of offers, in particular (a) an offer of securities addressed solely to qualified investors (as defined by the Prospectus Law), (b) an offer of securities addressed to fewer than 100 natural or legal persons per Member State, other than qualified investors, and (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 50,000 per investor, for each separate offer. These three exemptions should mainly apply in the context of (closed-end) SIFs which must "reserve their securities to one or several well-informed investors" in accordance with the SIF Law.

It should be reminded that where a prospectus must be established for a closed-end SIF under Part II (in view of an offer to the public and/or an admission to trading on a regulated market – where none of the exemptions provided for under articles 5.2 or 6.2 of the Prospectus Law applies), article 52(3) of the SIF Law provides that if a prospectus has been published in accordance with the Prospectus Law, there is no further obligation to draw up an offering document within the meaning of the SIF Law. In practice, a prospectus, allowing the admission to trading, shall be established and submitted to the approval of the CSSF in accordance with the Prospectus Law – without having to establish a "second prospectus", i.e. an offering document in accordance with the SIF Law.

- Concerning Part III of the Prospectus Law, it applies to offers to the public and to admissions to trading on a regulated market of securities and other comparable securities not referred to in Part II, namely those indicated under article 4.2, with the exception however of the units issued by open-end UCIs which still fall exclusively under the provisions of the law of 30 March 1988 and of 20 December 2002 on undertakings for collective investment.

Indeed, article 29 on the scope of Chapter 1 of Part III of the Prospectus Law provides that "offers to the public of securities representative of units issued by undertakings for collective investment other than the closed-end type exclusively fall under the provisions of the laws of 30 March 1988 and 20 December 2002 on undertakings for collective investment." Similarly, article 45 on the scope of Chapter 2 of Part III of the Prospectus Law provides that "Admissions to trading of securities representative of units issued by Luxembourg undertakings for collective investment other than the closed-end type, of units issued by non-Luxembourg undertakings for collective investment in securities governed by harmonised Community law marketed in Luxembourg and those issued by foreign undertakings for collective investment other than the closed-end type and offered to the public in Luxembourg fall under the sole provisions of the laws of 30 March 1988 and 20 December 2002 on undertakings for collective investment."

More important, the new wording (following the entry into force of the Prospectus Law) of article 95 of the law of 20 December 2002 on undertakings for collective investment reads as follows: "Luxembourg UCIs other than the closed-end type, UCITS governed by harmonised Community law and foreign UCIs in case of a public offer in Luxembourg shall be exempt from publishing a prospectus as provided for in Part III of the Law on prospectuses for securities. The prospectus which such UCIs draw up in accordance with the regulatory requirements applicable to UCIs shall be valid for the purposes of an offer to the public of securities or the admission of securities to trading on a regulated market."

Therefore, Luxembourg open-end UCIs are exempted from the obligation to publish a prospectus under the Prospectus Law. The CSSF considers that open-end SIFs should be treated in this context as other open-end type UCIs. Indeed, taking into account the

terminology used by the Prospectus Law, the new wording of article 95 of the law of 20 December 2002 on undertakings for collective investment (generally referring to "the regulation applicable to UCIs") and the SIF Law (which entered into force in 2007 and refers in many aspects to the aforementioned law of 20 December 2002) and the general legal context in this field leads to this conclusion and we consider that it clearly reflects the intention of the legislator.

In short, for the admission to trading on a regulated market of UCI/SIF units, two cases are possible:

- For a closed-end UCI/SIF (within the meaning of the Prospectus Law): a prospectus, whose content is defined in Regulation (EC) No 809/2004, must be drawn up and submitted to the approval of the CSSF under the Prospectus Law.

- For an open-end UCI/SIF (within the meaning of the Prospectus Law): the UCI/SIF offering document to be approved by the CSSF in accordance with the regulation applicable to UCIs/SIFs may be used for the admission to trading.

In both cases, the drawing up of one document is sufficient, there are no legal requirements to establish a second document.

66. What Annexes of the Prospectus Regulation are applicable in case of Islamic debt securities "sukuks"?

The sukuks may be treated as asset backed securities pursuant to the provisions of article 2.5 of the Prospectus Regulation or, subject to certain conditions, as guaranteed debt securities pursuant to article 23.2 and Annex VI of the Prospectus Regulation. Indeed, provided that the payments of principal and periodic revenues under the securities are guaranteed on a contractual basis by one or more underlying entity(ies), in other words, if the payment of principal and the periodic distributions are independent from the performance of the underlying asset, the CSSF considers that the underlying entity(ies) may be described in accordance with the provisions of Annex VI of the Prospectus Regulation.

Luxembourg, 31 January 2011