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

Grand-ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, and:

1. **transposing Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits;**
2. **amending Grand-ducal Regulation of 13 July 2007 relating to the keeping of the official listing for financial instruments; and**
3. **repealing Grand-ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector**

(Mém. A 2018, No 447)

We Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having regard to the Law of 5 April 1993 on the financial sector, as amended, and notably Articles 37-1 and 37-3 thereof;

Having regard to Article 37 of the Law of 13 July 2007 on markets in financial instruments, as amended;

Having regard to the Law of 17 December 2010 relating to undertakings for collective investment, as amended, and notably the first subparagraph of Article 101(4) thereof;

Having regard to the Law of 12 July 2013 on alternative investment fund managers, as amended, and notably the first subparagraph of Article 5(6) thereof;

Having regard to the opinion of the Chamber of Commerce;

Having heard our State Council;

Upon the report of Our Minister of Finance and after deliberation of the Government in Council;

Decide:

Chapter 1 - Protection of client financial instruments and funds, product governance obligations and rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits

Section 1 - Scope and definitions

Article 1. Scope and definitions

(1) Without prejudice to Article 45(4) of the Law of 5 April 1993 on the financial sector, as amended, this grand-ducal regulation shall apply to credit institutions and investment firms incorporated under Luxembourg law, as well as to the Luxembourg branches of third-country undertakings in accordance with Article 35(4) of the Law of 5 April 1993 on the financial sector, as amended, to management companies in accordance with Article 101(4) of the Law of 17 December 2010 relating to undertakings for collective investment, as amended, and to alternative investment fund managers in accordance with Article 5(6) of the Law of 12 July 2013 on alternative investment fund managers, as amended.

(2) For the purposes of this grand-ducal regulation, references to financial instruments shall also include structured deposits.

(3) For the purposes of this grand-ducal regulation, 'securities financing transaction' means transactions as defined in point (11) of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the

Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

(4) For the purposes of this grand-ducal regulation, 'eligible money market fund' means a collective investment undertaking authorised under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), or which is subject to supervision and, if applicable, authorised by an authority under the national law of the authorising Member State, and which satisfies all of the following conditions:

1. its primary investment objective shall be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
2. it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
3. it shall provide liquidity through same day or next day settlement.

For the purposes of point (2), a money market instrument shall be considered to be of high quality if the management/investment company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality. Where one or more credit rating agencies registered and supervised by the European Securities and Markets Authority have provided a rating of the instrument, the management/investment company's internal assessment shall have regard to, inter alia, those credit ratings.

Section 2 - Protection of client financial instruments and funds

Article 2. Protection of client financial instruments and funds

(1) Credit institutions and investment firms shall comply with the following requirements:

1. keep records and accounts enabling them at any time and without delay to distinguish assets held for one client from assets held for any other client and from their own assets;
2. maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and, as regards investment firms, the funds held on behalf of clients, and that they may be used as an audit trail;
3. conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those assets are held;
4. take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with Article 3, are identifiable separately from their own financial instruments and from the financial instruments belonging to that third party, by means of differently titled accounts in the books of that third party or other equivalent measures that achieve the same level of protection;
5. as regards investment firms, take the necessary steps to ensure that client funds deposited, in accordance with Article 4, in a central bank, a credit institution authorised in a Member State or in a third country or an eligible money market fund are recorded in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firm;
6. introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

(2) If, due to legal requirements, credit institutions or investment firms cannot comply with paragraph 1 to protect clients' rights to satisfy the requirements of Article 37-1(7) and (8) of the Law of 5 April 1993 on the financial sector, as amended, credit institutions and investment firms shall put in place arrangements to ensure that clients' assets are protected to meet the objectives of paragraph 1.

(3) If the applicable law of the jurisdiction in which the client funds or financial instruments are held prevents credit institutions and investment firms from complying with the provisions of points (4) or (5) of paragraph 1, where applicable to them, the latter shall inform the Commission de Surveillance du Secteur Financier (hereinafter, the "CSSF") thereof. In such case, the CSSF shall prescribe requirements which have

an equivalent effect in terms of protecting clients' rights. Credit institutions and investment firms shall inform their clients on a durable medium.

(4) Security interests, liens or rights of set-off over client financial instruments or funds enabling a third party to dispose of client's financial instruments or funds in order to recover debts that do not relate to the client or provision of services to the client are not permitted except where this is required by applicable law in a third country jurisdiction in which the client funds or financial instruments are held.

Where credit institutions and investment firms are obliged to enter into agreements that create such security interests, liens or rights of set-off, they shall disclose that information to clients indicating to them the risks associated with those arrangements.

Where security interests, liens or rights of set-off are granted by the credit institution or the investment firm over client financial instruments or funds, or where the credit institution or investment firm has been informed that they are granted, they shall be recorded in client contracts and the credit institution’s or investment firm’s own accounts to make the ownership status of client assets clear, such as in the event of an insolvency.

(5) Credit institutions and investment firms shall make information pertaining to clients' financial instruments and funds readily available to the competent authorities, the resolution authorities, the Fonds de Garantie des Dépôts Luxembourg, the Système d'Indemnisation des Investisseurs Luxembourg, as well as to the persons who are appointed, employed or mandated to exercise any function in the framework of a liquidation proceeding. The information to be made available shall include the following:

1. related internal accounts and records that readily identify the balances of funds and financial instruments held on behalf of each client;
2. where client funds are held by credit institutions or investment firms in accordance with Article 4, details on the accounts in which client funds are held and on the relevant agreements with those credit institutions or investment firms;
3. where financial instruments are held by credit institutions or investment firms in accordance with Article 3, details on the accounts opened with third parties and on the relevant agreements with those third parties, as well as details on the relevant agreements with those credit institutions or investment firms;
4. details of third parties carrying out any related outsourced tasks and details of any outsourced tasks;
5. key individuals of the credit institutions and investment firms involved in related processes, including those responsible for oversight of the credit institutions’ and investment firms’ requirements in relation to the protection of client assets; and
6. agreements relevant to establish client ownership over assets.

(6) The financial instruments accounts held by credit institutions or investment firms and the cash accounts held by investment firms with a Luxembourg depositary and identified with the depositary as client assets of these credit institutions or investment firms cannot be seized by the creditors of these credit institutions or investment firms nor by the creditors of the clients of these credit institutions or investment firms.

Article 3. Depositing client financial instruments

(1) Credit institutions and investment firms may deposit financial instruments held by them on behalf of their clients into an account or accounts opened with a third party provided that they exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements agreed with this third party for the holding and safekeeping of those financial instruments.

In particular, credit institutions and investment firms shall take into account the expertise and market reputation of the third party as well as any legal requirements related to the holding of those financial instruments that could adversely affect clients' rights.

(2) Where a credit institution or an investment firm proposes to deposit client financial instruments with a third party, the credit institution or investment firm shall only deposit financial instruments with a third party in a jurisdiction where the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision and that third party is subject to this specific regulation and supervision.

(3) Credit institutions and investment firms shall not be authorised to deposit financial instruments held on behalf of their clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person unless one of the following conditions is met:

1. the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country;
2. where the financial instruments are held on behalf of a professional client, that client requested the credit institution or investment firm in writing to deposit them with a third party in that third country.

(4) The requirements under paragraphs 2 and 3 shall also apply when the third party has delegated any of its functions concerning the holding and safekeeping of financial instruments to another third party.

Article 4. Depositing client funds

(1) Investment firms shall, on receiving any client funds, promptly place those funds into one or more accounts opened with any of the following:

1. a central bank;
2. a credit institution authorised in a Member State;
3. a credit institution authorised in a third country;
4. an eligible money market fund.

(2) Investment firms which do not deposit their client funds with a central bank shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution or eligible money market fund where the funds are placed and the arrangements agreed with the credit institution or eligible money market fund for the holding of those funds and they shall consider the need for diversification of these funds as part of their due diligence.

In particular, investment firms shall take into account the expertise and market reputation of such credit institutions or eligible money market funds with a view to ensuring the protection of clients' rights, as well as any legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect clients' rights.

Investment firms shall ensure that clients give their explicit consent to the placement of their funds in an eligible money market fund. In order to ensure this right to consent is effective, investment firms shall inform clients that funds placed with an eligible money market fund will not be held in accordance with the requirements for the protection of client funds set out in this grand-ducal regulation.

(3) Where investment firms deposit client funds with a credit institution or eligible money market fund of the same group as the investment firm, they shall limit the funds that they deposit with any such group entity or combination of any such group entities so that funds do not exceed 20 per cent of all such funds.

An investment firm may not comply with this limit where it is able to demonstrate that, in view of the nature, scale and complexity of its business, and also the safety offered by the entities referred to in the first subparagraph, and including in any case the small balance of client funds, the investment firm holds the requirement under the previous paragraph is not proportionate. Investment firms shall periodically review the assessment made in accordance with this subparagraph and shall notify their initial and reviewed assessments to the CSSF.

Article 5. Use of client financial instruments

(1) Credit institutions and investment firms are not allowed to enter into arrangements for securities financing transactions in respect of financial instruments held by them on behalf of a client, or otherwise to use such financial instruments for their own account or the account of any other person or client of the firm, unless both of the following conditions are met:

1. the client has given his prior express consent to the use of the financial instruments on specified terms, as clearly evidenced in writing and affirmatively executed by signature or other equivalent mechanism, and
2. the use of that client's financial instruments is restricted to the specified terms to which the client consented.

(2) Credit institutions and investment firms are not allowed to enter into arrangements for securities financing transactions in respect of financial instruments held on behalf of a client in an omnibus account held with a third party, or otherwise use financial instruments held in such an account for their own account or for the account of any other person unless, in addition to the conditions set out in paragraph 1, at least one of the following conditions is met:

1. the client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with point (1) of paragraph 1; or
2. the credit institution or investment firm shall have in place systems and controls ensuring that only financial instruments belonging to clients who have given prior express consent in accordance with point (1) of paragraph 1 are so used.

The records of the credit institution or investment firm shall include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

(3) Credit institutions and investment firms shall take appropriate measures to prevent the unauthorised use of client financial instruments for their own account or the account of any other person such as:

1. the conclusion of agreements with clients on measures to be taken by the credit institution or investment firm in case the client does not have enough provision on its account on the settlement date, such as borrowing of the corresponding securities on behalf of the client or unwinding the position;
2. the close monitoring by the credit institution or investment firm of its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done; and
3. the close monitoring and prompt requesting of undelivered securities outstanding on the settlement day and beyond.

(4) Credit institutions and investment firms shall adopt specific arrangements for all clients to ensure that the borrower of client financial instruments provides the appropriate collateral and that they monitor the continued appropriateness of such collateral and they shall take the necessary steps to maintain the balance with the value of client instruments.

(5) The third party with which a credit institution or investment firm holds an account on which financial instruments identified as belonging to one or several clients of this credit institution or investment firm are registered may validly trust the confirmation by the concerned credit institution or investment firm that it holds the necessary agreement to use these financial instruments.

(6) Credit institutions and investment firms shall not conclude agreements whose provisions are contrary to Article 13, subparagraph 4, of the Law of 5 August 2005 on financial collateral arrangements, as amended.

Article 6. Governance arrangements concerning the protection of client assets

Credit institutions and investment firms shall appoint a single officer of sufficient skill and authority with specific responsibility for matters relating to the compliance by credit institutions and investment firms with their obligations regarding the protection of client financial instruments and funds.

Credit institutions and investment firms shall decide, ensuring full compliance with this grand-ducal regulation, whether the appointed officer is to be dedicated solely to this task or whether the officer can discharge responsibilities effectively whilst having additional responsibilities.

Article 7. Reports by *réviseurs d’entreprises* (statutory auditors)

Credit institutions and investment firms shall mandate their *réviseurs d'entreprises* (statutory auditors) to report, on an annual basis, in writing, on the adequacy of the arrangements under Article 37-1(7) and (8) of the Law of 5 April 1993 on the financial sector, as amended, Article 13, subparagraph 4, of the Law of 5 August 2005 on financial collateral arrangements, as amended, and this section. The report of the *réviseur d'entreprises* (statutory auditor) shall also cover the branches that the credit institution or investment firm under Luxembourg law has abroad. The report shall be transmitted by the *réviseur d'entreprises* (statutory auditor) to the authorised management of the credit institution or investment firm, which shall provide a copy of this report to the CSSF.

Section 3 - Product governance requirements

Article 8. Product governance obligations for credit institutions and investment firms manufacturing financial instruments

(1) Credit institutions and investment firms shall comply with the provisions of this article when manufacturing financial instruments, which encompasses the creation, development, issuance and/or design of financial instruments.

Credit institutions and investment firms manufacturing financial instruments shall comply, in a way that is appropriate and proportionate, with the relevant requirements in paragraphs 2 to 15, taking into account the nature of the financial instrument, the investment service and the target market for the product.

(2) Credit institutions and investment firms shall establish, implement and maintain procedures and measures to ensure the manufacturing of financial instruments complies with the requirements on proper management of conflicts of interest, including remuneration. In particular, credit institutions or investment firms manufacturing financial instruments shall ensure that the design of the financial instrument, including its features, does not adversely affect end clients or does not lead to problems with market integrity by enabling them to mitigate and/or dispose of their own risks or exposure to the underlying assets of the product, where they already hold the underlying assets on own account.

(3) Credit institutions and investment firms shall analyse potential conflicts of interests each time a financial instrument is manufactured. In particular, credit institutions and investment firms shall assess whether the financial instrument creates a situation where end clients may be adversely affected if they take:

1. an exposure opposite to the one previously held by this credit institution or investment firm; or
2. an exposure opposite to the one that the credit institution or investment firm wants to hold after the sale of the product.

(4) Credit institutions and investment firms shall consider whether the financial instrument may represent a threat to the orderly functioning or to the stability of financial markets before deciding to proceed with the launch of the product.

(5) Credit institutions and investment firms shall ensure that relevant staff involved in the manufacturing of financial instruments possess the necessary expertise to understand the characteristics and risks of the financial instruments they intend to manufacture.

(6) Credit institutions and investment firms shall ensure that the management body has effective control over the credit institution's or investment firm's product governance process. Credit institutions and investment firms shall ensure that the compliance reports to the management body systematically include information about the financial instruments manufactured by the credit institution or investment firm, including information on the distribution strategy. Credit institutions and investment firms shall make these reports available to the CSSF on request.

(7) Credit institutions and investment firms shall ensure that the compliance function monitors the development and periodic review of product governance arrangements in order to detect any risk of failure by the credit institution or investment firm to comply with the obligations set out in this article.

(8) Where credit institutions and investment firms collaborate, including with entities which are not authorised and supervised in accordance with Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (hereinafter "Directive 2014/65/EU"), or third-country firms, to create, develop, issue and/or design a product, they shall outline their mutual responsibilities in a written agreement.

(9) Credit institutions and investment firms shall identify at a sufficiently granular level the potential target market for each financial instrument and specify the type(s) of client for whose needs, characteristics and objectives the financial instrument is compatible. As part of this process, credit institutions and investment firms shall identify any group(s) of clients for whose needs, characteristics and objectives the financial instrument is not compatible. Where credit institutions or investment firms collaborate to manufacture a financial instrument, only one target market needs to be identified.

Credit institutions and investment firms manufacturing financial instruments that are distributed through other credit institutions or investment firms shall determine the needs and characteristics of clients for whom the product is compatible based on their theoretical knowledge of and past experience with the financial instrument or similar financial instruments, the financial markets and the needs, characteristics and objectives of potential end clients.

(10) Credit institutions and investment firms shall undertake a scenario analysis of their financial instruments which shall assess the risks of poor outcomes for end clients posed by the product and in which circumstances these outcomes may occur. Credit institutions and investment firms shall assess the financial instrument under negative conditions covering what would happen if, for example:

1. the market environment deteriorated;

2. the manufacturer or a third party involved in manufacturing or functioning of the financial instrument experiences financial difficulties or other counterparty risk materialises;
3. the financial instrument fails to become commercially viable; or
4. demand for the financial instrument is much higher than anticipated, putting a strain on the credit institution's or investment firm’s resources, or on the market of the underlying instrument.

(11) Credit institutions and investment firms shall determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining the following elements:

1. the financial instrument's risk/reward profile is consistent with the target market; and
2. financial instrument design is driven by features that benefit the client and not by a business model that relies on poor client outcomes to be profitable.

(12) Credit institutions and investment firms consider the charging structure proposed for the financial instrument, including by examining the following:

1. financial instrument's costs and charges are compatible with the needs, objectives and characteristics of the target market;
2. charges do not undermine the financial instrument's return expectations, in particular where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a financial instrument; and
3. the charging structure of the financial instrument is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand.

(13) Credit institutions and investment firms shall ensure that the provision of information about a financial instrument to distributors includes information about the appropriate channels for distribution of the financial instrument, the product approval process and the target market assessment and is of an adequate standard to enable distributors to understand and recommend or sell the financial instrument properly.

(14) Credit institutions and investment firms shall review the financial instruments they manufacture on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Credit institutions and investment firms shall consider if the financial instrument remains consistent with the needs, characteristics and objectives of the target market and if it is being distributed to the target market, or is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible.

(15) Credit institutions and investment firms shall review financial instruments prior to any further issue or re-launch, if they are aware of any event that could materially affect the potential risk to investors and at regular intervals to assess whether the financial instruments function as intended. Credit institutions and investment firms shall determine how regularly to review their financial instruments based on relevant factors, including factors linked to the complexity or the innovative nature of the investment strategies pursued. Credit institutions and investment firms shall also identify crucial events that would affect the potential risk or return expectations of the financial instrument, such as:

1. the crossing of a threshold that will affect the return profile of the financial instrument; or
2. the solvency of certain issuers whose securities or guarantees may impact the performance of the financial instrument.

When such events occur, the credit institution or investment firm shall take appropriate action which may consist of:

1. the provision of any relevant information on the event and its consequences on the financial instrument to the clients or the distributors of the financial instrument if the credit institution or investment firm does not offer or sell the financial instrument directly to the clients;
2. changing the product approval process;
3. stopping further issuance of the financial instrument;
4. changing the financial instrument to avoid unfair contract terms;
5. considering whether the sales channels through which the financial instruments are sold are appropriate where credit institutions and investment firms become aware that the financial instrument is not being sold as envisaged;

6. contacting the distributor to discuss a modification of the distribution process;
7. terminating the relationship with the distributor; or
8. informing the CSSF.

Article 9. Product governance obligations for distributors

(1) Credit institutions and investment firms, when deciding the range of financial instruments issued by themselves or other credit institutions or investment firms and services they intend to offer or recommend to clients, shall comply, in a way that is appropriate and proportionate, with the relevant requirements laid down in paragraphs 2 to 10, taking into account the nature of the financial instrument, the investment service and the target market for the product.

Credit institutions and investment firms shall also comply with the applicable requirements of Part II, Chapter 4, of the Law of 5 April 1993 on the financial sector, as amended, when offering or recommending financial instruments manufactured by entities that are not subject to Directive 2014/65/EU. As part of this process, credit institutions and investment firms shall have in place effective arrangements to ensure that they obtain sufficient information about these financial instruments from these manufacturers.

Credit institutions and investment firms shall determine the target market for the respective financial instrument, even if the target market was not defined by the manufacturer.

(2) Credit institutions and investment firms shall have in place adequate product governance arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics, and objectives of an identified target market and that the intended distribution strategy is consistent with the identified target market. Credit institutions and investment firms shall appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures. As part of this process, credit institutions and investment firms shall identify any groups of clients for whose needs, characteristics and objectives the product or service is not compatible.

Credit institutions and investment firms shall obtain from manufacturers that are subject to Directive 2014/65/EU information to gain the necessary understanding and knowledge of the products they intend to recommend or sell in order to ensure that these products will be distributed in accordance with the needs, characteristics and objectives of the identified target market.

Credit institutions and investment firms shall also take all reasonable steps to ensure they obtain adequate and reliable information from manufacturers not subject to Directive 2014/65/EU to ensure that products will be distributed in accordance with the characteristics, objectives and needs of the target market. Where relevant information is not publicly available, the distributor shall take all reasonable steps to obtain such relevant information from the manufacturer or its agent. Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under 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 or Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. This obligation is relevant for products sold on primary and secondary markets and shall apply in a proportionate manner, depending on the degree to which publicly available information is obtainable and the complexity of the product.

Credit institutions and investment firms shall use the information obtained from manufacturers and information on their own clients to identify the target market and distribution strategy. When a credit institution or an investment firm acts both as a manufacturer and a distributor, only one target market assessment shall be required.

(3) Credit institutions and investment firms, when deciding the range of financial instrument and services that they offer or recommend and the respective target markets, shall maintain procedures and measures to ensure compliance with all applicable requirements under Part II, Chapter 4, of the Law of 5 April 1993 on the financial sector, as amended, including those relating to disclosure, assessment of suitability or appropriateness, inducements and proper management of conflicts of interest. In this context, particular care shall be taken when distributors intend to offer or recommend new products or there are variations to the services they provide.

(4) Credit institutions and investment firms shall periodically review and update their product governance arrangements in order to ensure that they remain robust and fit for their purpose, and take appropriate actions where necessary.

(5) Credit institutions and investment firms shall review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Credit institutions and investment firms shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives of the identified target market and whether the intended distribution strategy remains appropriate. Credit institutions and investment firms shall reconsider the target market and/or update the product governance arrangements if they become aware that they have wrongly identified the target market for a specific product or service or that the product or service no longer meets the circumstances of the identified target market, such as where the product becomes illiquid or very volatile due to market changes.

(6) Credit institutions and investment firms shall ensure that their compliance function oversees the development and periodic review of product governance arrangements in order to detect any risk of failure to comply with the obligations set out in this article.

(7) Credit institutions and investment firms shall ensure that relevant staff possess the necessary expertise to understand the characteristics and risks of the products that they intend to offer or recommend and the services provided as well as the needs, characteristics and objectives of the identified target market.

(8) Credit institutions and investment firms shall ensure that the management body has effective control over the credit institution's or investment firm's product governance process to determine the range of investment products that they offer or recommend and the services provided to the respective target markets. Credit institutions and investment firms shall ensure that the compliance reports to the management body systematically include information about the products they offer or recommend and the services provided. They shall make the reports available to the CSSF on request.

(9) Distributors shall provide manufacturers with information on sales and, where appropriate, information on the above reviews to support product reviews carried out by manufacturers.

(10) Where different credit institutions or investment firms work together in the distribution of a product or service, the credit institution or investment firm with the direct client relationship has ultimate responsibility to meet the product governance obligations set out in this article. However, intermediary credit institutions and investment firms shall:

1. ensure that relevant product information is passed from the manufacturer to the final distributor in the chain;
2. if the manufacturer requires information on product sales in order to comply with their own product governance obligations, enable them to obtain it; and
3. apply the product governance obligations for manufacturers, as relevant, in relation to the service they provide.

Section 4. - Inducements

Article 10. Inducements

(1) Credit institutions and investment firms paying or being paid any remuneration or commission or providing or being provided with any non-monetary benefit in connection with the provision of an investment service or ancillary service to a client shall ensure that all the conditions set out in Article 37-3(3d) of the Law of 5 April 1993 on the financial sector, as amended, and the requirements set out in paragraphs 2 to 5 are met at all times.

(2) A remuneration, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

1. it is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received, such as:
   a) the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third-party product providers having no close links with the credit institution or investment firm;
   b) the provision of non-independent investment advice combined with either: an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the

client has invested; or with another ongoing service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or

c) the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third-party product providers having no close links with the credit institution or investment firm, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments;

2. it does not directly benefit the credit institution or investment firm, its shareholders or employees without tangible benefit to the relevant client; and
3. it is justified by the provision of an ongoing benefit to the relevant client in relation to an ongoing inducement.

A remuneration, commission, or non-monetary benefit shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the remuneration, commission or non-monetary benefit.

(3) Credit institutions and investment firms shall fulfil the requirements set out in paragraph 2 on an ongoing basis as long as they continue to pay or receive the remuneration, commission or non-monetary benefit.

(4) Credit institutions and investment firms shall hold evidence that any remuneration, commissions or non-monetary benefits paid or received by the credit institution or investment firm are designed to enhance the quality of the relevant service to the client:

1. by keeping an internal list of all remuneration, commissions and non-monetary benefits received by the credit institution or investment firm from a third party in relation to the provision of investment or ancillary services; and
2. by recording how the remuneration, commissions and non-monetary benefits paid or received by the credit institution or investment firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the credit institution’s or investment firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client.

(5) In relation to any payment or benefit received from or paid to third parties, credit institutions and investment firms shall disclose to the client the following information:

1. prior to the provision of the investment or ancillary service, the credit institution or investment firm shall disclose to the client information on the payment or benefit concerned in accordance with Article 37-3(3d) of the Law of 5 April 1993 on the financial sector, as amended. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid by the credit institution or investment firm in connection with the investment service provided to a client shall be priced and disclosed separately;
2. where a credit institution or investment firm was unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, it shall also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and
3. at least once a year, as long as ongoing inducements are received by the credit institution or investment firm in relation to the investment services provided to the relevant clients, it shall inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way.

In implementing these requirements, credit institutions and investment firms shall take into account the rules on costs and charges set out in subparagraph 4 of Article 37-3(3) of the Law of 5 April 1993 on the financial sector, as amended, and in Article 50 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

When more credit institutions or investment firms are involved in a distribution channel, each credit institution or investment firm providing an investment or ancillary service shall comply with its obligations to make disclosures to its clients.

Article 11. Inducements in respect of investment advice on an independent basis or portfolio management services

(1) Credit institutions and investment firms providing investment advice on an independent basis or portfolio management shall return to clients any remuneration, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the services provided to that client as soon as reasonably possible after receipt. All remuneration, commissions or monetary benefits received from third parties in relation to the provision of independent investment advice and portfolio management shall be transferred in full to the client.

Credit institutions and investment firms shall set up and implement a policy to ensure that any remuneration, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of independent investment advice and portfolio management are allocated and transferred to each individual client.

Credit institutions and investment firms shall inform clients about the remuneration, commissions or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the client.

(2) Credit institutions and investment firms providing investment advice on an independent basis or portfolio management shall not accept non-monetary benefits that do not qualify as acceptable minor non-monetary benefits in accordance with paragraph 3.

(3) The following benefits shall qualify as acceptable minor non-monetary benefits only if they are:

1. information or documentation relating to a financial instrument or an investment service, generic in nature or personalised to reflect the circumstances of an individual client;
2. written material from a third party that is commissioned and paid for by a corporate issuer or potential corporate issuer to promote a new issuance by the company, or where the third-party firm is contractually engaged and paid by the corporate issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any credit institutions and investment firms wishing to receive it or to the general public;
3. participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service;
4. hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under point (3); and
5. other minor non-monetary benefits deemed capable of enhancing the quality of service provided to a client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with a credit institution’s or investment firm's duty to act in the best interest of the client.

Acceptable minor non-monetary benefits shall be reasonable and proportionate and of such a scale that they are unlikely to influence the credit institution’s or investment firm's behaviour in any way that is detrimental to the interests of the relevant client.

Disclosure of minor non-monetary benefits shall be made prior to the provision of the relevant investment or ancillary services to clients. In accordance with point (1) of the first subparagraph of Article 10(5), minor non-monetary benefits may be described in a generic way.

Article 12. Inducements in relation to research

(1) The provision of research by third parties to credit institutions and investment firms providing portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if it is received in return for either of the following:

1. direct payments by the credit institution or investment firm out of its own resources;
2. payments from a separate research payment account controlled by the credit institution or investment firm, provided the following conditions relating to the operation of the account are met:

a) the research payment account is funded by a specific research charge to the client;

b) as part of establishing a research payment account and agreeing the research charge with their clients, credit institutions or investment firms set and regularly assess a research budget as an internal administrative measure;

c) the credit institution or investment firm is held responsible for the research payment account;

d) the credit institution or investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

With regard to point (2) of the first subparagraph, where a credit institution or an investment firm makes use of the research payment account, it shall provide the following information to its clients:

1. before the provision of an investment service to its clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them;
2. annual information on the total costs that each of them has incurred for third-party research.

(2) Where a credit institution or an investment firm operates a research payment account, it shall also be required, upon request by their clients or by the CSSF, to provide a summary of the providers paid from this account, the total amount they were paid over a defined period, the benefits and services received by the credit institution or the investment firm, and how the total amount spent from the account compares to the budget set by the credit institution or investment firm for that period, noting any rebate or carry-over if residual funds remain in the account. For the purposes point (2)(a) of the first subparagraph of paragraph 1, the specific research charge shall:

1. only be based on a research budget set by the credit institution or investment firm for the purpose of establishing the need for third-party research in respect of investment services rendered to its clients; and
2. not be linked to the volume and/or value of transactions executed on behalf of the clients.

(3) Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in point (2) of the first subparagraph of paragraph 1 and in the second subparagraph of paragraph 1.

(4) The total amount of research charges received may not exceed the research budget.

(5) The credit institution or investment firm shall agree with clients, in the credit institution’s or investment firm’s investment management agreement or general terms of business, the research charge as budgeted by the credit institution or investment firm and the frequency with which the specific research charge will be deducted from the resources of the client over the year. Increases in the research budget shall only take place after the provision of clear information to clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the credit institution or investment firm should have a process to rebate those funds to the client or to offset it against the research budget and charge calculated for the following period.

(6) For the purposes of point (2)(b) of the first subparagraph of paragraph 1, the research budget shall be managed solely by the credit institution or investment firm and shall be based on a reasonable assessment of the need for third-party research. The allocation of the research budget to purchase third-party research shall be subject to appropriate controls and authorised management oversight to ensure it is managed and used in the best interests of the credit institution’s or investment firm's clients. Those controls include a clear audit trail of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in point (2)(d) of the first subparagraph of paragraph 1. Credit institutions and investment firms shall not use the research budget and research payment account to fund internal research.

(7) For the purposes of point (2)(c) of the first subparagraph of paragraph 1, the credit institution or investment firm may delegate the administration of the research payment account to a third party, provided that the arrangement facilitates the purchase of third-party research and payments to research providers in the name of the credit institution or investment firm without any undue delay in accordance with the credit institution’s or investment firm's instruction.

(8) For the purposes of point (2)(d) of the first subparagraph of paragraph 1, credit institutions and investment firms shall establish all necessary elements in a written policy and provide it to their clients. It shall also address the extent to which research purchased through the research payment account may

benefit clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the credit institution or investment firm will take to allocate such costs fairly to the various clients' portfolios.

(9) A credit institution or investment firm providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each other benefit or service by the same credit institution or investment firm to investment firms established in the Union shall be subject to a separately identifiable charge. The supply of and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.

Chapter 2 - Amendment to Grand-ducal Regulation of 13 July 2007 relating to the keeping of the official listing for financial instruments

(...)[1]

Chapter - 3 Repealing and final provisions

Article 30.

Grand-ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector is repealed.

Article 31.

Reference to this regulation shall be made as follows:

“Grand-ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits”.

Article 32.

Our Minister of Finance shall execute this regulation, which shall be published in the Journal officiel du Grand-Duché de Luxembourg.

[1] Please refer to the coordinated version of Grand-ducal Regulation of 13 July 2007 relating to the keeping of the official listing for financial instruments