Law of 9 May 2006 on market abuse transposing

- **Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),**
- **Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation,**
- **Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest,**
- **Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions**

(Mém. A 2006, No. 83)

as amended by:

- the law of 26 July 2010 amending the law of 9 May 2006 on market abuse and complementing the transposition of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)

  (Mém. A 2010, No. 119)

- the law of 28 April 2011[1]
  - transposing Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management;
  - transposing for credit institutions Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts;
  - completing the transposition of Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes and the payout delay;
  - amending the law of 5 April 1993 on the financial sector, as amended;
  - amending the law of 17 June 1992 relating to the accounts of credit institutions, as amended;
  - amending the law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”);
  - amending the law of 31 May 1999 governing the domiciliation of companies;

[1] No impact on the English version of the law.

– amending the law of 13 July 2007 on markets in financial instruments, as amended;
– amending the law of 11 January 2008 on transparency requirements for issuers of securities;
– amending the law of 10 November 2009 on payment services

(Mém. A 2011, No. 81)

– the law of 21 December 2012 transposing Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) and amending:
1. the law of 6 December 1991 on the insurance sector, as amended;
2. the law of 5 April 1993 on the financial sector, as amended;
3. the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
4. the law of 22 March 2004 on securitisation, as amended;
5. the law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
6. the law of 10 July 2005 on prospectuses for securities, as amended;
7. the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended;
8. the law of 9 May 2006 on market abuse, as amended;
9. the law of 13 February 2007 relating to specialised investment funds, as amended;
10. the law of 13 July 2007 on markets in financial instruments, as amended;
11. the law of 11 January 2008 on transparency requirements for issuers of securities, as amended;
12. the law of 10 November 2009 on payment services, as amended;
13. the law of 17 December 2010 relating to undertakings for collective investment

(Mém. A 2012, No. 275)

Chapter I: Definitions and Scope

Article 1. For the purposes of this law:

1) "Inside information" means information

- of a precise nature,
- which has not been made public,
- relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and
- which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

In relation to derivatives on commodities, "inside information" shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices on those markets.

For persons charged with the execution of orders concerning financial instruments, "inside information" shall also mean information conveyed by a client and related to the client's pending orders, provided that the information conveyed meets the criteria set out in the first subparagraph;

2) "Market manipulation" means:

(a) transactions or orders to trade:

- which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or

- which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level,

unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned;

(b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;

(c) dissemination of information through the media or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. In respect of journalists when they act in their professional capacity, such dissemination of information is to be assessed taking into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question;

3) "Financial instrument" means:

- transferable securities,
- units in collective investment undertakings,
- money-market instruments,
- financial-futures contracts, including equivalent cash-settled instruments,
- forward interest-rate agreements,
- interest-rate, currency and equity swaps,
- options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates,
- derivatives on commodities,
- any other instrument admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made.

4) “Transferable securities” means those classes of securities which are negotiable on the capital market with the exception of instruments of payment, such as:

– shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares,

– bonds and other forms of securitised debt, including depositary receipts in respect of such securities,

– any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to

transferable securities, currencies, interest rates or yields, commodities or other indices or measurements;

5) "Money-market instruments" means those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

6) "Regulated market" means a market as defined in point 14) of paragraph (1) of Article 4, of Directive 2004/39/EC, which, when it is authorised in a Member State, appears in the list which the European Commission is required to publish on its Internet site pursuant to Article 47 of Directive 2004/39/EC, or "a market for which the market abuse provisions and prohibitions are similar to the requirements set out in this law"[2];

7) "Accepted market practices" means practices that are reasonably expected in one or more financial markets and are accepted in accordance with this law;

8) "Person" means any natural or legal person;

9) "Competent authority" means the competent authority designated by each Member State or third country to supervise application of the market abuse regulation. In Luxembourg, this is the *Commission de surveillance du secteur financier* (hereinafter referred to as "the CSSF");

10) "Member State" means a Member State of the European Union. The signatory States of the European Economic Area Agreement other than the Community Member States are given the same status as European Union Member States within the limits laid down by that agreement and the laws pertaining thereto;

11) "Third country" means a State other than a Member State;

12) "Person discharging managerial responsibilities within an issuer" means a person who is:

- a member of the administrative, management or supervisory bodies of the issuer,
- a senior executive, who is not a member of the bodies as referred to in the previous indent, having regular access to inside information relating, directly or indirectly, to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of this issuer;

13) "Person closely associated with a person discharging managerial responsibilities within an issuer of financial instruments" means

- the spouse of the person discharging managerial responsibilities, or any partner of that person considered by national law as equivalent to the spouse,
- according to national law, dependent children of the person discharging managerial responsibilities,
- other relatives of the person discharging managerial responsibilities, who have shared the same household as that person for at least one year on the date of the transaction concerned,

[2] Law of 26 July 2010

– any legal person, trust estate or other trust, or any association without legal personality, whose managerial responsibilities are discharged by a person referred to in point 12) of this Article or in the three previous subparagraphs of this point, or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person;

14) "Investment firm" means any person as defined in point 1) of paragraph (1) of Article 4 of Directive 2004/39/EC;

15) "Credit institution" means any person as defined in paragraph (1) of Article 1 of Directive 2000/12/EC;

16) "Investment recommendation" means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public;

17) "research or other information recommending or suggesting an investment strategy" means:

a) information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a financial instrument or an issuer of financial instruments,

b) information produced by persons other than the persons referred to in (a) which directly recommends a particular investment decision in respect of a financial instrument;

18) "Distribution channels" means a channel through which information is, or is likely to become, publicly available. "Likely to become publicly available information" shall mean information to which a large number of persons have access;

19) "Appropriate regulation" means any regulation, including self-regulation, in place in Member States or third countries, as provided for in Directive 2003/6/EC or deemed equivalent by the CSSF;

20) "Market operator" means a person or persons who manages and/or operates the business of a regulated market. The market operator may be the regulated market itself;

21) "MTF" means a multilateral trading system as defined in point 15) of paragraph (1) of Article 4, of Directive 2004/39/EC;

22) "Issuer" means "for the purposes of Section 3 of Chapter III"[3], the issuer of a financial instrument to which an investment recommendation relates directly or indirectly.

[3] Law of 26 July 2010

Article 2.

1. For the purposes of applying point 1) of Article 1, information shall be deemed to be "of a precise nature" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.

2. For the purposes of applying point 1) of Article 1, "information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments" shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

3. For the purposes of applying the second subparagraph of point 1) of Article 1, users of markets on which derivatives on commodities are traded are deemed to expect to receive information relating, directly or indirectly, to one or more such derivatives which is:

   – routinely made available to the users of those markets, or

   – required to be disclosed in accordance with legal or regulatory provisions, market rules, contracts or customs on the relevant underlying commodity market or commodity derivatives market.

Article 3.

1. For the purposes of applying point 2(a) of Article 1, the CSSF and the market participants shall ensure that the following non-exhaustive signals, which should not necessarily be deemed in themselves to constitute market manipulation, are taken into account when they examine transactions or orders to trade:

   – the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, in particular when these activities lead to a significant change in the price of the financial instrument;

   – the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument lead to significant changes in the price of the financial instrument or related derivative or underlying asset admitted to trading on a regulated market;

   – whether transactions undertaken lead to no change in beneficial ownership of a financial instrument admitted to trading on a regulated market;

   – the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, and might be associated with significant changes in the price of a financial instrument admitted to trading on a regulated market;

   – the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;

– the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument admitted to trading on a regulated market, or more generally the representation of the order book available to market participants, and are removed before they are executed;

– the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

2. For the purposes of applying point 2)(b) of Article 1, the CSSF and the market participants shall ensure that the following non-exhaustive signals, which should not necessarily be deemed in themselves to constitute market manipulation, are taken into account when they examine transactions or orders to trade:

– whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them:

– whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest.

Article 4.

This law shall apply to any financial instrument admitted to trading on at least one regulated market, or for which a request for admission to trading on such a market has been made, irrespective of whether or not the transaction itself actually takes place on that market.

Articles 8, 9 and 10 shall also apply to any financial instrument not admitted to trading on a regulated market but whose value depends on a financial instrument as referred to in the previous subparagraph.

Articles 8, 9, 10 and 11 shall also apply to any financial instrument admitted to trading on at least one MTF, or for which a request for admission to trading on such an MTF has been made, irrespective of whether or not the transaction itself actually takes place on that MTF.

Articles 8, 9 and 10 shall also apply to any financial instrument not admitted to trading on an MTF but whose value depends on a financial instrument referred to in the previous subparagraph.

Article 5.

Except as otherwise provided, the prohibitions and requirements provided for in this law shall apply to:

– actions carried out in Luxembourg or abroad concerning financial instruments that are admitted to trading on a regulated market situated or operating in Luxembourg or for which a request for admission to trading on such a market has been made;

– actions carried out in Luxembourg concerning financial instruments that are admitted to trading on a foreign regulated market or for which a request for admission to trading on such a market has been made.

Article 6.

This law shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by a Member State or a third country, by the European

System of Central Banks, by a national central bank or by any other officially designated body, or by any person acting on their behalf.

Article 7.

The prohibitions provided for in this law shall not apply to trading in own shares in "buy-back" programmes or to the stabilisation of a financial instrument provided such trading is carried out in accordance with Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.

Chapter II: Prohibition on Insider dealing and Market Manipulation

Article 8.

1. Any person who,

   – by virtue of his membership of the administrative, management or supervisory bodies of the issuer; or

   – by virtue of his holding in the capital of the issuer; or

   – by virtue of his having access to the information through the exercise of his employment, profession or duties; or

   – by virtue of his criminal activities,

   possesses inside information, is prohibited from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

2. Where the person referred to in paragraph 1 is a legal person, the prohibition laid down in that paragraph shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

3. This Article shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded before the person concerned possessed inside information.

Article 9.

Any person subject to the prohibition referred to in Article 8 is prohibited from:

– disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;
– recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

Article 10.

Articles 8 and 9 also apply to any person, other than the persons referred to in those Articles, who possesses inside information while that person knows, or ought to have known, that it is inside information.

Article 11.

All persons are prohibited from engaging in market manipulation.

Chapter III: Obligations incumbent on Market Participants

Section 1: Obligation to Notify Suspicious Transactions

Article 12.

1. Without prejudice to paragraph 3 of Article 27, any credit institution or other professional of the financial sector established in Luxembourg shall notify the CSSF without delay if it reasonably suspects that a transaction might constitute insider dealing or market manipulation.

2. The persons referred to in paragraph 1 shall decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves insider dealing or market manipulation, taking into account the elements constituting insider dealing or market manipulation referred to in points 1) and 2) of Article 1 and Articles 2 and 3 and 8 to 11.

3. Persons subject to the notification obligation transmit to the CSSF the following information:

   – description of the transactions, including the type of order and the type of trading market,

   – reasons for suspicion that the transactions might constitute market abuse,

   – means for identification of the persons on behalf of whom the transactions have been carried out, and of other persons involved in the relevant transactions,

   – capacity in which the person subject to the notification obligation operates (such as for own account or on behalf of third parties),

   – any information which may have significance in reviewing the suspicious transactions.

4. Where the information referred to in paragraph 3 is not available at the time of notification, the notification shall include at least the reasons why the notifying persons suspect that the transactions might constitute insider dealing or market manipulation. All remaining information shall be provided to the CSSF as soon as it becomes available.

5. Notification to the CSSF can be done by mail, electronic mail, telecopy or telephone. Where notification is done by telephone, confirmation is notified by any written form upon request by the CSSF.

6. If the notification concerns transactions relating to a financial instrument admitted to trading on one or more foreign regulated markets or in respect of which a request for admission to trading on such a market has been made, the CSSF shall immediately transmit the information notified to the competent authorities of the regulated markets concerned.

7. Persons notifying to the CSSF shall not inform any other person, in particular the persons on behalf of whom the transactions have been carried out or parties related to those persons, of this notification, except by virtue of provisions laid down by law. The fulfilment of this requirement shall not involve the notifying person in liability of any kind, providing the notifying person acts in good faith.

8. The CSSF shall not disclose to any person the identity of the persons having notified these transactions if disclosure would, or would be likely to, harm the persons having notified the transactions. This provision is without prejudice to the requirements of the enforcement and sanctioning regimes under this law and the law of 2 August 2002 on the protection of persons with regard to the processing of personal data.

9. The notification to the CSSF shall not constitute a breach of secrecy rules, nor a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.

Section 2: Obligations incumbent on Issuers of Financial Instruments

Article 13.

Articles 14, 15 and 16 shall apply to issuers whose financial instruments are admitted to trading on a regulated market located or operating in Luxembourg or whose financial instruments are the subject of a request for admission to trading on such a market, whether such issuers have their registered office in Luxembourg or abroad.

Articles 14, 15 and 16 shall not apply to issuers who have not requested or accepted admission of their financial instruments to trading on a regulated market located or operating in Luxembourg.

Article 14.

1. Issuers shall inform the public as soon as possible of inside information which directly concerns the said issuers.

   Issuers shall be deemed to have complied with the previous subparagraph if, upon the coming into existence of a set of circumstances or the occurrence of an event, albeit not yet formalised, they have promptly informed the public thereof.

2. Issuers shall disclose inside information in the French, German or English language, at least, using distribution channels which one might reasonably expect to disseminate the inside information to the public efficiently.

   The means and terms of disclosure may be determined in a Grand-Ducal Regulation.

3. Issuers shall take reasonable care to ensure that the disclosure of inside information to the public is synchronised as closely as possible between all categories of investors in Luxembourg as well as in all other Member States and in Third countries in which those issuers have requested or accepted the admission to trading of their financial instruments on a regulated market.

4. Without prejudice to the provisions of paragraph 2, issuers shall post on their Internet site all inside information that they are required to disclose publicly in the French, German or English language, at least, for a period of three months.

5. Issuers shall not combine, in a manner likely to be misleading, the provision of inside information to the public with the marketing of their activities.

6. Any significant changes concerning already publicly disclosed inside information shall be publicly disclosed promptly after these changes occur, through the same channel as the one used for public disclosure of the original information.

Article 15.

1. An issuer may under his own responsibility delay the public disclosure of inside information such as not to prejudice his legitimate interests provided:

   – that such omission would not be likely to mislead the public and;

   – that the issuer has put the necessary measures in place to ensure the confidentiality of that information.

2. For the purposes of applying paragraph 1, the issuer is deemed to have put the necessary measures in place to ensure the confidentiality of inside information when it controls access to that information and, in particular, when it:

   – has established effective arrangements to deny access to such information to persons other than those who require it for the exercise of their functions within the issuer;

   – has taken the necessary measures to ensure that any person with access to such information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information;

   – has in place measures which allow immediate public disclosure in case the issuer was not able to ensure the confidentiality of the relevant inside information, without prejudice to the second subparagraph of paragraph 1 of Article 16.

Article 16.

1. Whenever an issuer, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, as referred to in the first indent of Article 9, he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure.

   The provisions of the first subparagraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association or on a contract.

2. Issuers, or persons acting on their behalf or for their account, shall draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information relating, directly or indirectly, to the issuer, whether on a regular or occasional basis, and shall inform the relevant persons of their inclusion in that list.

3. The list of insiders shall state:

   – the identity of any person having access to inside information,

   – the reason why any such person is on the list,

   – the dates at which the list was created and updated.

4. Issuers, or persons acting on their behalf or for their account, shall promptly update the list of insiders:

– whenever there is a change in the reason why any person is already on the list,

– whenever any new person has to be added to the list,

– by mentioning whether and when any person already on the list has no longer access to inside information.

Issuers, or persons acting on their behalf or for their account, shall inform the relevant persons of the changes made.

5. Issuers, or persons acting on their behalf or for their account, shall keep the list of insiders for at least five years after it was drawn up or updated.

6. Issuers, or persons acting on their behalf or for their account, shall take the necessary measures to ensure that all persons included in the list of insiders with access to inside information acknowledge the legal and regulatory duties entailed and are aware of the sanctions attaching to the misuse or improper circulation of such information.

7. Issuers, or persons acting on their behalf or for their account, shall transmit the list of insiders to the CSSF when it so requests.

Article 17.

1. Persons discharging managerial responsibilities within an issuer having its registered office in Luxembourg and, where applicable, persons closely associated with them, shall declare to the CSSF and to the issuer the existence of transactions conducted on their own account relating to shares of the issuer admitted to trading on a regulated market, or to derivatives or other financial instruments linked to them. The notification shall be made within five working days of each transaction's execution date.

2. Issuers having their registered office in a third country shall declare to the CSSF, as soon as they have knowledge thereof, all transactions which persons exercising managerial responsibilities within them and, where applicable, persons closely associated with them, have conducted for their own account relating to shares of the issuer admitted to trading on a regulated market, or to derivatives or other financial instruments linked to them, provided that the CSSF is the authority to which those issuers are required to file the annual information in relation to their shares in accordance with Article 10 of Directive 2003/71/EC.

3. The declaration shall contain the following information:

– name of the relevant issuer,
– name of the person discharging managerial responsibilities within the issuer, or, where applicable, name of the person closely associated with such a person,
– reason for responsibility to notify,
– description of the financial instrument,
– nature of the transaction (e.g. acquisition or disposal),
– date and place of the transaction,
– price per security and total volume of the transaction.

4. Issuers shall ensure that public access to the information referred to in paragraphs 1 and 2 is readily available in the French, German or English language, at least, as soon as possible.

Section 3: Obligations incumbent on Persons who Produce or Disseminate Investment Recommendations

Sub-Section 1: General Principle

Article 18.

Persons who produce or disseminate investment recommendations in Luxembourg in the practice of their profession or the conduct of their business shall take reasonable care to ensure that such information is fairly presented and disclose their interests or indicate any conflicts of interest concerning the financial instruments to which that information relates.

Persons who produce or disseminate investment recommendations in Luxembourg in the practice of their profession or the conduct of their business are designated as “relevant persons” for the purpose of applying this section.

Sub-Section 2: Obligations incumbent on Persons who Produce Investment Recommendations

Article 19.

1. Any investment recommendation shall clearly and prominently disclose the identity of the person responsible for its production, in particular, the name and job title of the individual who prepared the recommendation and the name of the legal person responsible for its production.

2. Where the relevant person is an investment firm or a credit institution, the investment recommendation shall disclose the identity of its prudential supervisory authority. If the relevant person is an investment firm or a credit institution established in Luxembourg, the investment recommendation shall also state that the fact of it’s being subject to the CSSF’s supervision or, in the case of a branch of an institution of Community origin, the supervision of a foreign prudential supervisory authority, does not in any way mean that the CSSF or the foreign prudential supervisory authority exercises control over the investment recommendation’s content.

   Where the relevant person is neither an investment firm nor a credit institution, but is subject to self-regulatory standards or codes of conduct, the recommendation shall contain a reference to those standards or those codes.

3. Where the relevant person makes non-written recommendations, it is exempted from compliance with the obligations imposed by paragraphs 1 and 2, provided that its Internet site makes reference to the place where that information can be directly and easily accessed by the public.

4. Paragraphs 1 and 2 shall not apply to journalists, publishers and broadcasters subject to equivalent appropriate regulation, including appropriate equivalent self-regulation, provided that such regulation achieves similar effects as those of paragraphs 1 and 2.

   The CSSF shall consult the relevant foreign competent authority before reaching a decision on the equivalence of a foreign regulatory system and the similar nature of the effects achieved by such a system.

Article 20.

1. All relevant persons shall take reasonable care to ensure that:

   – facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;

   – all sources are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated;

   – all projections, forecasts and price targets are clearly labelled as such and that the material assumptions made in producing or using them are indicated.

2. Where the relevant person makes non-written investment recommendations, it is exempted from compliance with the obligations imposed by the last indent of paragraph 1, as long as its Internet site makes reference to the place where that information can be directly and easily accessed by the public.

3. All relevant persons shall take reasonable care to ensure that any investment recommendation can be substantiated as reasonable, upon request by the CSSF.

4. Paragraphs 1 and 3 shall not apply to journalists, publishers and broadcasters subject to equivalent appropriate regulation, including appropriate equivalent self-regulation, provided that such regulation achieves similar effects as those of paragraphs 1 and 3.

   The CSSF shall consult the relevant foreign competent authority before reaching a decision on the equivalence of a foreign regulatory system and the similar nature of the effects achieved by such a system.

Article 21.

1. In addition to the obligations laid down in Article 20, where the relevant person is an independent analyst, an investment firm, a credit institution, any related legal person, any other relevant person whose main business is to produce investment recommendations, or a natural person working for them under a contract of employment or otherwise, that person shall take reasonable care to ensure that:

   a) the material sources are indicated, as appropriate, including the relevant issuer, together with the fact whether the investment recommendation has been disclosed to that issuer and amended following this disclosure before its dissemination;

   b) the basis of valuation or methodology used to evaluate a financial instrument or an issuer of a financial instrument, or to set a price target for a financial instrument, is adequately summarised;

   c) the meaning of the investment recommendation made, which may include the time horizon of the investment to which the investment recommendation relates, is adequately explained and any appropriate risk warning (including a sensitivity analysis of the significant assumptions) is indicated;

   d) reference is made to the planned frequency, if any, of updates of the recommendation and to any major changes in the coverage policy previously announced;

e) the date on which the investment recommendation was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any financial instrument price mentioned;

f) where an investment recommendation differs from an investment recommendation concerning the same financial instrument or issuer, issued during the 12-month period immediately preceding its release, this change and the date of the earlier investment recommendation are indicated clearly and prominently.

2. Where the requirements laid down in points a), b) or c) of paragraph 1 would be disproportionate in relation to the length of the investment recommendation distributed, it shall suffice to make clear and prominent reference in the investment recommendation itself to the place where the required information can be directly and easily accessed by the public, provided that there has been no change in the methodology or basis of valuation used.

3. Where the relevant person makes non-written investment recommendations, it shall be exempted from compliance with the requirements laid down in points b), d) and e) of paragraph 1 and from presentation of the sensitivity analysis of the significant assumptions referred to in c) of paragraph 1, provided that its Internet site makes reference to the place where that information can be directly and easily accessed by the public.

Article 22.

1. Relevant persons shall disclose all relationships and circumstances that they may reasonably expect to impair the objectivity of the investment recommendation, in particular where relevant persons have a significant financial interest in one or more of the financial instruments which are the subject of the investment recommendation, or a significant conflict of interest with respect to an issuer to which the investment recommendation relates.

   Where the relevant person is a legal person, any natural or legal person working for it, under a contract of employment or otherwise, who was involved in preparing the investment recommendation is bound in relation to the relevant person *mutatis mutandis* by the obligation of transparency referred to in the previous subparagraph. The relevant person shall also disclose the information received by virtue of the previous subparagraph.

2. Where the relevant person is a legal person, the information to be disclosed in accordance with paragraph 1 shall include the following:

   – any interests or conflicts of interest of the relevant person or of related legal persons that are accessible or reasonably expected to be accessible to the persons involved in the preparation of the investment recommendation;

   – any interests or conflicts of interest of the relevant person or of related legal persons known to persons who, although not involved in the preparation of the investment recommendation, had or could reasonably be expected to have access to the investment recommendation prior to its dissemination to customers or the public.

3. The investment recommendation itself shall include the disclosures provided for in paragraphs 1 and 2. Where such disclosures would be disproportionate in relation to the length of the investment recommendation distributed, it shall suffice to make

clear and prominent reference in the investment recommendation itself to the place where such disclosures can be directly and easily accessed by the public.

4. Where the relevant person makes non-written recommendations, it needs only disclose the existence of any interests or conflicts of interest, provided that its Internet site provides the information referred to in paragraphs 1 and 2.

5. Paragraphs 1 to 3 shall not apply to journalists, publishers and broadcasters subject to equivalent appropriate regulation, including equivalent appropriate self-regulation, provided that such regulation achieves similar effects as those of paragraphs 1 to 3.

   The CSSF shall consult the relevant foreign competent authority before reaching a decision on the equivalence of a foreign regulatory system and the similar nature of the effects achieved by such a system.

Article 23.

1. In addition to the obligations laid down in Article 22, any investment recommendation produced by an independent analyst, an investment firm, a credit institution, any related legal person, or any other relevant person whose main business is to produce investment recommendations, shall clearly and prominently disclose the following information on their interests and conflicts of interest:

   a) major shareholdings that exist between the relevant person or any related legal person on the one hand and the issuer on the other hand. These major shareholdings include the following instances:

      – when shareholdings exceeding 5% of the issued share capital in the issuer are held by the relevant person or any related legal person, or

      – when shareholdings exceeding 5% of the issued share capital of the relevant person or any related legal person are held by the issuer;

   b) other significant financial interests held by the relevant person or any related legal person in relation to the issuer;

   c) where applicable, a statement that the relevant person or any related legal person is a market maker or liquidity provider in the financial instruments of the issuer;

   d) where applicable, a statement that the relevant person or any related legal person has been lead manager or co-lead manager over the previous twelve months of any publicly disclosed offer of financial instruments of the issuer;

   e) where applicable, a statement that the relevant person or any related legal person is party to any other agreement with the issuer relating to the provision of investment banking services, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous twelve months or has given rise during the same period to the payment of a compensation or to the promise to get a compensation paid;

   f) where applicable, a statement that the relevant person or any related legal person is party to an agreement with the issuer relating to the production of the investment recommendation.

2. In general terms, the effective organisational and administrative arrangements set up within the investment firm or the credit institution for the prevention and avoidance of conflicts of interest with respect to investment recommendations, including information barriers, shall be disclosed.

3. For natural or legal persons working for an investment firm or a credit institution, under a contract of employment or otherwise, and who were involved in preparing the investment recommendation, the requirement under the second subparagraph of paragraph 1 of Article 22 shall include, in particular, disclosure of whether the remuneration of such persons is tied to investment banking transactions performed by the investment firm or credit institution or any related legal person.

   Where those natural persons receive or purchase the shares of the issuers prior to a public offering of such shares, the price at which the shares were acquired and the date of acquisition shall also be disclosed.

4. Investment firms and credit institutions shall disclose on their Internet site, on a quarterly basis, the proportion of all investment recommendations that are “buy”, “hold”, “sell” or equivalent terms, as well as the proportion of issuers corresponding to each of these categories to which the investment firm or the credit institution has supplied material investment banking services over the previous twelve months.

5. The investment recommendation itself shall contain the disclosures required by paragraphs 1 to 4. Where the requirements under paragraphs 1 to 4 would be disproportionate in relation to the length of the investment recommendation distributed, it shall suffice to make clear and prominent reference in the investment recommendation itself to the place where such disclosure can be directly and easily accessed by the public.

6. Where the relevant person makes non-written investment recommendations, it needs only disclose the existence of any interests or conflicts of interest, provided that its Internet site provides the information referred to in paragraph 1.

Sub-Section 3: Obligations incumbent on Disseminators of Investment Recommendations produced by Third Parties

Article 24.

Whenever a relevant person under his own responsibility disseminates an investment recommendation produced by a third party, the recommendation shall indicate clearly and prominently the identity of that relevant person.

Article 25.

1. Whenever an investment recommendation produced by a third party is substantially altered within disseminated information, that information shall clearly indicate the substantial alteration in detail. Whenever the substantial alteration consists of a change of the direction of the investment recommendation, the requirements laid down in Articles 19 to 22 on producers must be met by the disseminator, to the extent of the substantial alteration.

2. In addition, relevant legal persons who themselves, or through natural persons, disseminate a substantially altered investment recommendation shall have a formal written policy so that the persons receiving the information may be directed to where they can have access to the identity of the producer of the investment recommendation, the investment recommendation itself and the disclosure of the

producer's interests or conflicts of interest, provided that these elements are publicly available.

3. The first and second paragraphs do not apply to news reporting on investment recommendations produced by a third party where the substance of the investment recommendation is not altered.

4. In case of dissemination of a summary of an investment recommendation produced by a third party, the relevant persons disseminating such summary shall ensure that the summary is clear and not misleading, mentioning the source document and, in the summary itself, where the disclosures related to the source document can be directly and easily accessed by the public provided that they are publicly available.

Article 26.

In addition to the obligations laid down in Articles 24 and 25, whenever the relevant person is an investment firm, a credit institution or a natural person working for such persons, under a contract of employment or otherwise, and disseminates investment recommendations produced by a third party:

– the name of the competent authority for the prudential supervision of the investment firm or credit institution shall be clearly and prominently indicated;
– if the producer of the investment recommendation has not already disseminated it through a distribution channel, the requirements laid down in Article 23 on producers must be met by the disseminator;
– if the investment firm or credit institution has substantially altered the recommendation, the requirements laid down in Articles 19 to 23 on producers must be met.

Section 4: Obligations incumbent on Regulated Markets, Credit Institutions, Investment Firms and Market Operators using an MTF

Article 27.

1. Regulated markets established in Luxembourg, and likewise credit institutions, investment firms and market operators operating an MTF in Luxembourg, are required to adopt structural provisions aimed at preventing and detecting market manipulation practices.

2. Regulated markets established in Luxembourg, and likewise credit institutions, investment firms and market operators operating an MTF in Luxembourg, shall monitor the transactions undertaken through their system by their members, their participants or their users with a view to detecting any conduct potentially indicative of market abuse.

3. Regulated markets established in Luxembourg, or, where applicable, the operators on those markets, and likewise credit institutions, investment firms and market operators operating an MTF in Luxembourg, shall report any conduct potentially indicative of market abuse to the CSSF. They shall convey the relevant information to the CSSF without delay to enable it to investigate and pursue the market abuse and shall render to the CSSF all the assistance required to enable it to investigate and pursue the market abuse committed on or through their systems.

Chapter IV: Competent Authorities

Article 28.

Without prejudice to the competences of the judicial authorities, the CSSF is the administrative authority competent to supervise the application of the provisions of this law.

Article 29.

1. The CSSF shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions.

   The CSSF's powers include, inter alia, the right to:

   – have access to any document in any form whatsoever, and to receive a copy of it;
   – demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and hear any person;
   – carry out on-site inspections "with all the persons referred to in this law"[4];
   – require communication of existing telephone and existing data traffic records;
   – order the cessation of any practice contrary to this law;
   – suspend trading of the financial instruments concerned;
   – petition the President of the Court to freeze and/or sequestrate assets;
   – pronounce a temporary prohibition of professional activity in the financial sector by persons subject to its prudential supervision.

2. Moreover, with a view to ensuring compliance with Articles 14 to 18 and 27, the CSSF may take all necessary measures to ensure that the public is correctly informed.

3. This Article shall be without prejudice to the legal provisions on professional secrecy.

(Law of 26 July 2010)

"Article 29a.

1. The on-site inspections by the CSSF with persons referred to in this law, but not subject to its prudential supervision, may not be carried out without the express consent of the person with whom the inspection shall take place.

2. Where this consent is not given, the on-site inspection and seizing of any document, electronic file or other things that seem useful to ascertaining the truth must be subject to a prior authorisation, upon reasoned request (*demande motivée*) by the CSSF, by order of the investigating judge (*juge d'instruction*) with the *Tribunal d'arrondissement* (District Court) of the district in which the inspection shall be carried out. Where there are several investigating judges in a court, the chief investigating judge, or, should the latter not be available, the magistrate replacing him/her shall appoint, for each on-site inspection, the judge who shall be in charge of the inspection.

[4] Law of 26 July 2010

3. The investigating judge shall verify that the reasoned request submitted by the CSSF is justified and proportionate to the aim pursued; the request must include all the information elements that justify the on-site inspection. The investigating judge appoints a criminal investigation police officer (*officier de police judiciaire*) to assist the CSSF agents during the on-site inspection.

4. The person concerned by the CSSF on-site inspection and his/her counsel may attend the on-site inspection; they receive notification thereof the day before, with the indication, on pain of nullity, of the object and aim of the inspection. Exceptionally, if there is a possibility or probability that elements, whose certification and analysis seem useful to ascertaining the truth, might imminently be concealed, the CSSF agents and the appointed criminal investigation police officer in charge of assisting them shall initiate immediately these operations without prior notification to the persons concerned being required. A report on their operations shall be drawn up. Where the urgency of the request did not require notification to the persons concerned, the reason thereof shall be mentioned in the report.

5. The on-site inspections are carried out in all places where objects whose discovery would be useful to ascertaining the truth might be located. The investigating judge shall previously notify the State Prosecutor (*procureur d'Etat*). On-site inspections may not commence before 6.30 a.m. nor after 8.00 p.m.; failure to do so shall render the inspection void. The provisions of the Code of Criminal Procedure (*Code d'instruction criminelle*) regarding the rights of defence in the context of searches are applicable to on-site inspections carried out by CSSF agents and the criminal investigation police officer.

   During the on-site inspection, the CSSF agents and the criminal investigation police officer shall ensure the rights of defence, as well as if necessary, the application of the legal provisions applicable to the instruction and inspection measures as set out in the concerned profession's own law.

6. The documents, electronic files and other things seized shall be listed in the report. If an on-site inventory is difficult to carry out, the documents, files and other things seized shall be sealed off until they are listed in the inventory, in presence of the persons that attended the on-site inspection. The CSSF immediately receives a copy of all the documents and electronic files seized. The original documents, electronic files and other things seized are deposited at the registry (*greffe*) or entrusted to a judicial custodian (*gardien de saisie*).The provisions of the Code of Criminal Procedure relating to seizures shall apply.

7. The on-site inspections report shall be signed by the person with whom the inspection was carried out and by the persons who attended the inspection; any refusal to sign shall be mentioned in the report. A copy of the report shall be provided to them. A copy of the report shall be provided to the investigating judge who delivered the order and to the person concerned by the inspection.

Article 30.

1. The CSSF shall collaborate with the foreign competent authorities where this is necessary for the purpose of carrying out their respective duties, making use of the powers conferred on it by the law. The CSSF shall lend assistance to the foreign competent authorities, in particular by exchange of information and cooperation in investigations.

2. The CSSF shall, on request, immediately supply any information required for the purpose referred to in paragraph 1. Upon receiving any request of information, the

CSSF shall immediately take all necessary measures in order to gather the required information. If the CSSF is not able to supply the required information immediately, it shall notify the requesting competent authority of the reasons.

The transmission of information by the CSSF is subject to the following conditions:

– the information supplied must be necessary for accomplishment of the mission of the competent authority receiving it,

– the information supplied must be covered by the professional secrecy of the competent authority receiving it; where this is the competent authority of a third country, that authority's professional secrecy must provide guarantees at least equivalent to the professional secrecy which the CSSF is subject to,

– the competent authority receiving information from the CSSF may use it only for the purpose for which it was supplied to it and must be able to ensure that it will not be used for any other purpose.

The CSSF may refuse to act on a request for information where:

– communication might adversely affect the sovereignty, security or public policy of the State of Luxembourg,

– judicial proceedings have already been initiated in respect of the same actions and against the same persons before the Luxembourg courts,

– a final judgment has already been delivered in relation to such persons for the same actions in Luxembourg, or

– where the request is made by the competent authority of a third country and that authority does not grant the CSSF the same right to information.

In the cases referred to in the previous subparagraph's second and third indents, the CSSF shall provide the competent authority making the request with as detailed information as possible on those proceedings or the judgment.

3. Without prejudice to the obligations to which it is subject in judicial proceedings under criminal law, the CSSF may use information received pursuant to paragraph 1 only for the exercise of its functions within the scope of this law and in the context of administrative or judicial proceedings specifically related to the exercise of those functions. However, where the competent authority communicating information consents thereto, the CSSF may use the information received for other purposes or forward it to a foreign competent authority.

4. Where the CSSF is convinced that acts contrary to the provisions of this law are being, or have been, carried out abroad, or that acts carried out in Luxembourg are affecting financial instruments traded on a foreign regulated market, it shall give the competent authority concerned notice of that fact in as specific a manner as possible.

5. Where a foreign competent authority informs the CSSF that acts are being, or have been, carried out in Luxembourg contrary to foreign laws on market abuse, or that acts carried out abroad are affecting financial instruments traded on a regulated market in Luxembourg, the CSSF shall take the appropriate measures. It shall inform the notifying competent authority of the outcome of those measures and, so far as possible, of significant interim developments.

The CSSF shall consult the foreign competent authorities on the proposed follow-up to its action.

6. The CSSF may request that a foreign competent authority carry out an investigation on the latter's territory.

   It may further request that members of its own personnel be allowed to accompany the personnel of the foreign authority during the course of the investigation.

7. Where a foreign competent authority requests that the CSSF carry out an investigation in Luxembourg, the latter shall agree to do so without prejudice to the provisions of the following subparagraph. It may, on request, allow certain members of the requesting authority's personnel to accompany it during the investigation. The investigation shall, however, be subject throughout to the overall control of the CSSF. The CSSF may refuse to act on a request for an investigation to be conducted as provided for in the first subparagraph, or on a request for its personnel to be accompanied by personnel of the requesting competent authority, where:

   – such an investigation might adversely affect the sovereignty, security or public policy of the State of Luxembourg,

   – judicial proceedings have already been initiated in Luxembourg in respect of the same actions and against the same persons,

   – the said persons have already been definitively judged for the same facts in Luxembourg, or

   – where the request is made by the competent authority of a third country and that authority does not grant the CSSF the same right, or

   – where the request is made by the competent authority of a third country whose professional secrecy does not provide guarantees at least equivalent to the professional secrecy which the CSSF is subject to.

   In the cases referred to in the second and third indents, the CSSF shall provide the competent authority making the request with as detailed information as possible on those proceedings or the judgment.

8. Where a request for information sent to the competent authority of another Member State by the CSSF is not acted upon within a reasonable time or is rejected, the CSSF may bring that non-compliance to the attention of the "European Securities and Markets Authority"[5] "within a reasonable time"[6], in order to reach a rapid and effective solution. The CSSF may also avail itself of this possibility where a request it has sent to the competent authority of another Member State requesting that an inquiry be opened on the territory of that other Member State, or for its officials be authorised to accompany those of the other Member State's competent authority, is not acted upon within a reasonable time or is rejected.

Article 31.

1. For the purposes of applying the second subparagraph of point 1) of Article 1, and point 2)(a) of Article 1, the CSSF shall take the following factors into account, without prejudice to collaboration with other authorities, when assessing whether it can accept a particular market practice:

[5] Law of 21 December 2012
[6] Law of 21 December 2012

- the level of transparency of the relevant market practice to the whole market;
- the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand;
- the degree to which the relevant market practice has an impact on market liquidity and efficiency;
- the degree to which the relevant practice takes into account the trading mechanisms of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;
- the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, on which the same financial instrument is traded;
- the outcome of any investigation of the relevant market practice by the CSSF or by any other competent authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets;
- the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the types of market participants, including the extent of retail investors' participation in the relevant market.

When the CSSF considers the need for safeguard referred to in the second indent, it shall, in particular, analyse the impact of the relevant market practice against the main market parameters, such as the specific market conditions before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price.

2. The CSSF shall not consider market practices, in particular new or emerging market practices, to be unacceptable simply because they have not been previously accepted on the relevant market.

3. The CSSF shall regularly review the market practices it has accepted, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructure.

4. The CSSF shall observe the procedure set out in paragraphs 5 and 6 when considering whether to accept or continue to accept a particular market practice.

5. The CSSF shall consult the competent authorities of other Member States where comparable markets exist, i.e. in structures, volume, type of transactions.

6. The CSSF shall publicly disclose its decision regarding the acceptability of the market practice concerned, including appropriate descriptions of such practices. Where the decision concerns a market located or operating in the European Union, the CSSF shall transmit its decision to the "European Securities and Markets Authority"[7] for public disclosure as soon as possible.

   The disclosure shall include a description of the factors taken into account in determining whether the relevant practice is regarded as acceptable, in particular where different conclusions have been reached regarding the acceptability of the same practice on different Member States' markets.

[7] Law of 21 December 2012

7. When investigatory actions on specific cases have already started, the consultation procedure set out in paragraphs 4 to 6 may be delayed until the end of such investigation.

8. A market practice which was accepted following the consultation procedure set out in paragraphs 4 to 6 shall not be changed without using the same consultation procedure.

Chapter V: Sanctions

Article 32.

1. Natural persons referred to in Article 8 who (…)[8] violate the prohibitions imposed by that same Article, "with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect"[9], shall incur a term of imprisonment of between three months and two years and a fine of between 125 and 1,500,000 euros, or only one of these sanctions.

   The fine indicated in the previous subparagraph may be increased to ten times the amount of the profit realised and shall under no circumstances be less than the said profit.

2. Natural persons having received information in contravention of Articles 9 or 10 and who (…)[10] violate the prohibitions imposed by Article 8 "with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect"[11], shall incur a term of imprisonment of between eight days and one year and a fine of between 125 and 150,000 euros, or only one of these sanctions.

   The fine indicated in the previous subparagraph may be increased to ten times the amount of the profit realised and shall under no circumstances be less than the said profit.

3. Natural persons referred to in Article 9 who (…)[12] violate the prohibitions of Article 9 "with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect"[13], shall incur a term of imprisonment of between eight days and one year and a fine of between 125 and 25,000 euros, or only one of these sanctions.

4. Natural persons who (…)[14] commit the offence referred to in Article 11 "with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect"[15], shall incur a term of imprisonment of between three months and two years and a fine of between 125 and 1,500,000 euros, or only one of these sanctions.

5. Any attempt to commit the offences referred to in Article 32, paragraphs 1 and 2, shall incur the same sanctions.

[8] deleted by the Law of 26 July 2010
[9] Law of 26 July 2010
[10] deleted by Law of 26 July 2010
[11] Law of 26 July 2010
[12] deleted by the Law of 26 July 2010
[13] Law of 26 July 2010
[14] deleted by the Law of 26 July 2010
[15] Law of 26 July 2010

Article 33.

(Law of 26 July 2010)

"1. Without prejudice to the provisions of paragraphs 4 and 5, when the CSSF records a breach of Articles 8, 9, 10 or 11, committed intentionally or through carelessness or by negligence, it may impose an administrative fine (*amende administrative*) of between 125 and 1,500,000 euros on the person responsible for the breach.

Similarly, when the CSSF records a breach of the obligations set out in Articles 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, or in the implementing measures of these articles, it may impose an administrative fine of between 125 and 150,000 euros on the person responsible for the breach, upon having enjoined that person to remedy its infringement.

2. When the infringement resulted in a pecuniary advantage for the offender, the fine may be increased to ten times the amount of the profit realised and shall under no circumstances be less than the said profit.

3. The CSSF may impose an administrative fine (*amende d'ordre*) of between 125 and 25,000 euros on those who obstruct application of its supervisory and investigatory powers, who do not follow-up on its orders or who have knowingly given it inaccurate or incomplete information.

4. Where there are indications that might substantiate the opening of administrative proceedings by the CSSF liable to result in a fine imposed in accordance with paragraphs 1 or 3, the CSSF shall inform the State Prosecutor thereof. The State Prosecutor shall decide within three days from the receipt of this information whether prosecution is initiated, and gives opinion on his decision to the CSSF.

If the State Prosecutor decides to prosecute, the CSSF shall refrain from proceeding. In case of a negative decision or in the absence of a reply by the State Prosecutor after the period of three days, the CSSF shall proceed.

Where, during the proceedings, the CSSF notices that there are indication of a possible breach of Articles 8, 9 or 11 by the persons suspected, with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect, it shall relinquish the file and transmit it to the State Prosecutor to carry on with the proceedings.

If, during the course of its investigation and before summoning to appear, the State Prosecutor deems that the conditions provided for in Article 32 are not fulfilled, but that Article 29 might be applicable, he shall transmit the file to the CSSF to carry on with the proceedings.

5. When the State Prosecutor is referred to based on a complaint of facts liable to constitute a breach of Articles 8, 9 or 11, and he decides to prosecute, he shall inform the CSSF thereof. In this case, the CSSF refrains from proceeding. If the State Prosecutor decides not to prosecute, the CSSF shall proceed.

If, during the course of his investigation and before summoning to appear, the State Prosecutor deems that the conditions provided for in Article 32 are not fulfilled, but that Article 29 might be applicable, he shall transmit the file to the CSSF to carry on with the proceedings.

6. The CSSF may disclose to the public the administrative fines imposed, and likewise any measure or sanction that will be imposed for infringement of the provisions of

this law or its implementing measures, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. The costs shall be borne by the persons sanctioned. "Where the CSSF has disclosed such measure or sanction to the public, it shall contemporaneously report that fact to the European Securities and Markets Authority."[16]

7. If the behaviour reported to the CSSF constitutes a violation of this law or its implementing measures, the CSSF may pronounce on the credit institutions and other professionals of the financial sector who are responsible therefore, and on natural persons placed under their authority or acting on their behalf, a temporary prohibition on providing some or all of their services for a period not exceeding five years."

(Law of 21 December 2012)

"8. The CSSF shall provide the European Securities and Markets Authority annually with aggregated information regarding all measures and sanctions imposed in accordance with this Article."

Chapter VI: Remedies Against Administrative Decisions

Article 34.

The *Tribunal administratif* (Administrative Court) can undertake a full review of the merits of the decision adopted by the CSSF in implementation of this law (*recours en pleine jurisdiction*).

Chapter VII: Amending Provisions

Article 35.

Paragraph (1) of Article 5 of the law of 23 December 1998, as amended, on the supervision of securities markets is supplemented by the insertion of the word "either" before the words "on a registered market" and by the addition at the end of the paragraph of the words: "or on an MTF as envisaged in paragraph 21 of Article 1 of the law of 9 May 2006 on market abuse, whether such transactions have taken place on that MTF or otherwise".

In paragraph (5) of Article 5 of the amended law of 23 December 1998 on the supervision of securities markets, the words "or an MTF" are inserted after the words "a regulated market".

Paragraph (7) of Article 5 of the amended law of 23 December 1998 on the supervision of securities markets is amended by the addition, after the expressions "on a regulated market" and "on that regulated market", of the words "or on an MTF" and "or on that MTF", respectively.

Chapter VIII: Repealing Provision and Final Provision

Article 36.

This law replaces and repeals the law of 3 May 1991 on insider dealing.

Article 37.

This law may be referred to in abbreviated form using the designation "law on market abuse".

[16] Law of 21 December 2012