



CSSF Regulation No
20-10 of 21
December 2020
laying down the
implementing
measures of Article
100(1) of the Law of
17 December 2010
relating to
undertakings for
collective investment
as regards the
marketing of foreign
UCIs other than the
closed-end type to
retail investors in
Luxembourg.

CSSF Regulation No 20-10 of 21 December 2020 laying down the implementing measures of Article 100(1) of the Law of 17 December 2010 relating to undertakings for collective investment as regards the marketing of foreign UCIs other than the closed-end type to retail investors in Luxembourg.

(Mém. A 2020, No 1076)

The Executive Board of the Commission de Surveillance du Secteur Financier,

Having regard to Article 108a of the Constitution;

Having regard to the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), and in particular Article 9(2) thereof;

Having regard to the Law of 17 December 2010 relating to undertakings for collective investment, and in particular Article 100(1) thereof;

Decides:

Article 1

Definitions

In addition to the definitions of Article 1 of the Law of 17 December 2010 relating to undertakings for collective investment that apply for the purposes of this regulation:

- "foreign undertakings for collective investment (UCIs)" shall mean undertakings for collective investment, other than UCITS, which are established in a Member State of the European Union other than Luxembourg or in a third country;
- "UCI other than the closed-end type" shall mean a UCI other than a UCI for the units of which the investors have no redemption right.
- "retail investor" shall mean an investor who is not a professional investor;
- "professional investor" shall mean an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2014/65/EU on markets in financial instruments.

Article 2

Subject matter

(1) This regulation lays down the implementing measures of Article 100(1) of the Law of 17 December 2010 relating to undertakings for collective investment by defining the procedure and conditions that apply to the marketing of foreign UCIs other than the closed-end type to retail investors in Luxembourg.

Throughout this regulation, foreign UCIs other than the closed-end type are referred to as “foreign UCIs”.

(2) For the purposes of this regulation, the term “foreign UCI” also refers to the investment compartments of a foreign UCI.

Article 3

Scope

(1) Without prejudice to the provisions provided for in paragraph (2), this regulation shall apply to the marketing to retail investors in Luxembourg of foreign UCIs that are not governed by the provisions of CSSF Regulation No 15-03 laying down detailed rules for the application of Article 46 of the Law of 12 July 2013 on alternative investment fund managers.

(2) This regulation shall not apply to the marketing of foreign UCIs in Luxembourg to:

- eligible investors pursuant to Regulation (EU) No 345/2013 on European venture capital funds;
- eligible investors pursuant to Regulation (EU) No 346/2013 on European social entrepreneurship funds;
- eligible investors pursuant to Regulation (EU) No 2015/760 on European long-term investment funds.

Article 4

Marketing authorisation by the CSSF

(1) Prior to marketing its units or shares to retail investors in Luxembourg, any foreign UCI must have obtained an authorisation for such marketing by the CSSF in accordance with the provisions of Article 129(1) of the Law of 17 December 2010 relating to undertakings for collective investment and the provisions of this regulation.

(2) Foreign UCIs authorised to market their units or shares pursuant to this regulation are registered by the CSSF on a list which is published on its website.

(3) Where the foreign UCI qualifies as AIF within the meaning of Directive 2011/61/EU on Alternative Investment Fund Managers, the marketing authorisation pursuant to this regulation may not be granted prior to the completion of the notification procedure required for the marketing to professional investors, as provided

for by the provisions of Article 45 of the Law of 12 July 2013 on alternative investment fund managers.

Without prejudice to the documents and information that must be provided to the CSSF in the context of the notification procedure required for the marketing to professional investors referred to in subparagraph 1, any authorisation request for the marketing of foreign UCIs to retail investors in Luxembourg must include the items set out in Article 5 of this regulation.

Article 5

Marketing authorisation request

(1) The authorisation request to be filed with the CSSF pursuant to this regulation must include the following documents and information:

- (a) a certificate by the supervisory authorities of the home Member State of the foreign UCI certifying that:
 - the foreign UCI is authorised and subject to a permanent supervision in its home State;
 - the foreign UCI and its conducting officers have not been subject to sanctions or disciplinary measures by the supervisory authority of the home Member State during the last three years.

Where the certificate referred to in the second indent is not available, a declaration of honour of the legal representative of the foreign UCI as well as a declaration of honour of its conducting officers certifying that they have not been subject to sanctions or disciplinary measures by the supervisory authority of the home Member State during the last three years must be provided.

- (b) the addendum to the prospectus/offering document of the foreign UCI which includes specific information for the marketing in Luxembourg;
- (c) a Key Information document (KID) as provided for by Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs);
- (d) the latest annual report of the foreign UCI;
- (e) elements of information on the conducting officers of the foreign UCI: a recent *curriculum vitae*, a copy of the passport/identity card, a recent extract of the criminal record, where available, or any other comparable document;
- (f) the name and place of establishment of the depositary;
- (g) the arrangements made in accordance with Article 59 of the Law of 17 December 2010 relating to undertakings for collective investment;
- (h) if the foreign UCI is a feeder UCI, information on the master UCI including information on where the master UCI is established, the master UCI's instruments of incorporation and the prospectus/offering document of the master UCI.

The addendum referred to under item (b), which will be part of the foreign UCI's prospectus/offering document, must include all information useful to investors in Luxembourg, for them to invest with full knowledge of the facts. The information to be included in said addendum shall comprise, among others:

- appropriate information on the risks inherent to the foreign UCI's investment policy;
- information on the fees and expenses that may be charged to investors;
- information on the way investors may request the subscription, redemption or conversion of their units or shares in Luxembourg;
- information on the arrangements made in accordance with Article 59 of the Law of 17 December 2010 relating to undertakings for collective investment;
- the place where the foreign UCI's latest prospectus/offering document, its instruments of incorporation and the latest financial reports are made available;
- details on how the foreign UCI's net asset value is published;
- the name of the Luxembourg newspaper in which the investor notices are published or the reference to the website on which these notices are published.

(2) In addition to the documents and information referred to in paragraph (1), the CSSF may request any additional document and information it deems necessary for the scrutiny of the authorisation request.

Article 6

Marketing authorisation conditions

(1) In addition to the compliance with the conditions set out in Articles 100(1) and 129 of the Law of 17 December 2010 relating to undertakings for collective investment, the CSSF grants authorisation to a foreign UCI to market its units or shares to retail investors in Luxembourg only on condition that the UCI concerned be managed by a manager subject in its home State to regulation and prudential supervision.

Where the foreign UCI qualifies as AIF within the meaning of Directive 2011/61/EU on Alternative Investment Fund Managers, the manager of the foreign UCI must, in addition, permanently comply with the conditions provided for in Article 45 of the Law of 12 July 2013 on alternative investment fund managers.

(2) Where the foreign UCI is a feeder UCI, the marketing authorisation referred to in paragraph (1) is, in addition, subject to the condition that the master UCI be subject, in its home State, to a permanent supervision performed by a competent authority provided for by law, in order to ensure the protection of investors. In this case, cooperation between the CSSF and the supervisory authority of the master UCI must also be ensured.

(3) The granting of the marketing authorisation implies for the foreign UCI the obligation to inform the CSSF of any material change to the documents and information provided in accordance with Article 5 of this regulation and upon which the CSSF based its decision to grant the authorisation.

Article 7

Types of foreign UCIs that may be authorised to market their units or shares to retail investors in Luxembourg

(1) Subject to paragraph (2) of this article, a foreign UCI must comply with the following rules to be eligible to market its units or shares to retail investors in Luxembourg:

(a) Periodicity of the calculation of the issue and redemption price of the foreign UCI's units or shares:

Foreign UCIs must determine the issue and redemption prices of their units or shares at sufficiently close and fixed intervals, but at least once a month.

(b) Risk spreading:

Foreign UCIs must demonstrate sufficient risk spreading.

In general, the CSSF considers that compliance with the sufficient risk-spreading principle is achieved where the investment restrictions of a foreign UCI are in line with the following guidelines:

A. Securities

1. The foreign UCI may not invest more than 10 % of its assets in unlisted securities or securities which are not traded on another regulated market which operates regularly and is recognised and open to the public.
2. The foreign UCI may not acquire more than 10 % of the same type of securities issued by the same issuer.
3. The foreign UCI may not invest more than 20 % of its assets in securities of a same issuer.

The restrictions set out under items 1, 2 and 3 above shall not apply to:

- investments in securities issued or guaranteed by an OECD Member State or its regional or local authorities or by EU, regional or global supranational institutions and bodies;
- investments in target UCIs subject to risk-spreading requirements which are at least similar to those applicable to UCIs subject to Part II of the Law of 17 December 2010 relating to undertakings for collective investment.

B. Borrowings

The foreign UCI may not take on borrowings for an amount exceeding 25 % of its net assets, without prejudice to item D. of this paragraph.

C. Use of financial derivatives

When using financial derivatives, the foreign UCI must ensure an appropriate risk spreading of the underlying assets.

Furthermore, the relevant foreign UCI must be subject to risk-spreading and investment restriction rules similar to those applicable to UCIs subject to Part II of the Law of 17 December 2010 relating to undertakings for collective investment adopting so-called alternative investment strategies.

D. Real estate assets

In order to ensure a minimum risk spreading, the foreign UCI may not invest more than 20 % of its assets in a single real estate object.

Furthermore, the aggregate of all borrowings of the foreign UCI may not exceed on average 50 % of the valuation of all its properties.

(2) The CSSF may grant derogations from the rules set out under paragraph (1) based on an adequate justification and depending on the specific investment policy of a given foreign UCI.

Article 8

Provisions governing the payments to investors, redemption and subscription of units or shares as well as dissemination of information

(1) A foreign UCI which is authorised to market its units or shares to retail investors in Luxembourg pursuant to this regulation shall make the arrangements in accordance with Article 59 of the Law of 17 December 2010 relating to undertakings for collective investment to ensure the payments to investors and the redemptions and subscriptions of units or shares in Luxembourg.

(2) A foreign UCI marketing its units or shares to retail investors in Luxembourg shall furthermore take the appropriate measures to ensure that the information and documents it has to produce (net asset value, subscription and redemption price, prospectus, PRIIPs KID, financial reports, management regulations/articles of incorporation, among others) are available to investors in Luxembourg.

The information and documents referred to in the preceding subparagraph shall be provided to investors in Luxembourg in either French, German, English or Luxembourgish. Such information may notably be provided on a website.

Article 9

Applicable marketing rules in Luxembourg

Without prejudice to Article 8 of this regulation, the provisions laid down in the following laws shall be complied with when marketing securities to retail investors in Luxembourg:

- Law of 8 April 2011 concerning the implementation of a Consumer Code, as amended.
- Law of 23 December 2016 on sales and sidewalk sales and misleading and comparative advertising.

Article 10

Termination of marketing

(1) The CSSF shall be promptly informed whenever a foreign UCI decides to no longer market its units or shares to retail investors in Luxembourg on the basis of Article 100 of the Law of 17 December 2010 on alternative investment fund managers. Consequently, the relevant foreign UCI will be withdrawn from the list referred to in Article 4(2) of this regulation.

A notice to investors concerning the termination of marketing of the foreign UCI in Luxembourg must be published in a Luxembourg newspaper or on a website.

The obligation to comply with the provisions of Article 8 of this regulation will be maintained, following the termination of marketing, as long as investors established in or present in Luxembourg continue to hold investments in the UCI.

(2) The manager of a foreign UCI qualifying as AIF within the meaning of Directive 2011/61/EU on Alternative Investment Fund Managers, which terminates the marketing of units or shares of this UCI in Luxembourg, must in addition continue to comply with the obligations set out in Articles 22, 23 and 24 of the said Directive 2011/61/EU, as long as investors established or present in Luxembourg hold investments in this UCI.

Article 11

Withdrawal of the marketing authorisation

The CSSF may withdraw the marketing authorisation referred to in Article 4(1) of this regulation, where the foreign UCI no longer complies with the provisions of the Law of 17 December 2010 relating to undertakings for collective investment or the provisions of this regulation respectively.

Article 12

Publication

(1) This regulation will be published in the Journal Officiel du Grand-Duché de Luxembourg as well as on the CSSF website. This regulation shall enter into force on the first day following its publication in the Journal officiel du Grand-Duché de Luxembourg.

Foreign UCIs that have been granted an authorisation to market to retail investors in Luxembourg pursuant to Article 100(1) of the Law of 17 December 2010 relating to undertakings for collective investment are *ipso jure* considered as being authorised pursuant to this regulation at the time of its entry into force.



Commission de Surveillance
du Secteur Financier

Luxembourg, 21 December 2020

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