

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 10 March 2010

To all credit institutions and
investment firms incorporated
under Luxembourg law

CIRCULAR CSSF 10/442

Re: Notification procedure concerning the exercise of activities in another Member State by a credit institution or an investment firm incorporated under Luxembourg law

Amendment of Circular CSSF 07/326 “Provisions relating to Luxembourg incorporated credit institutions and investment firms established in another Member State by way of branches or exercising their activities in another Member State by free provision of services”

Ladies and Gentlemen,

This circular amends the above-mentioned Circular CSSF 07/326 of 19 November 2007 so as to take into account the guidelines regarding the notification procedure of cross-border activities published by the Committee of European Banking Supervisors (CEBS) on 27 August 2009¹.

1) Notifications in relation to branch establishment by a credit institution

The guidelines include a more complete form to be used by credit institutions wishing to establish a branch in another Member State. Annex 1 “Notification for branch establishment by a credit institution” (French and English version) of Circular CSSF 07/326 is thus replaced by the new standard form of Annex 1 included in this circular.

¹ The document “CEBS guidelines for passport notifications” is available on CEBS' website (www.cebbs.org), section “Publications”, sub-section “Standards & Guidelines”.

It should be borne in mind that credit institutions are henceforth required to specify in the new blank “MiFID” matrix all investment services and/or activities as well as ancillary services which they intend to provide on a cross-border basis as well as the financial instruments concerned. Pursuant to Article 32(7) of the MiFID Directive, the supervisory authority of the host Member State is responsible for ensuring that the services and/or activities performed on its territory by the branch of a credit institution incorporated under Luxembourg law comply with the obligations laid down in the MiFID Directive. Thus, the necessary details shall be communicated so that the competent authority of the host Member State may fulfil its responsibilities.

In this context, the footnote no. 2, regarding point 7 of Circular CSSF 07/326, is deleted and point 8 is replaced by the following text:

“8. As regards credit institutions, the programme of operations shall be set in accordance with Annex 1 of this circular which incorporates Annex 2 of “Guidelines for passport notifications” drawn up by CEBS.”

Moreover, point 16 is completed as follows in order to comply with CEBS' guidelines:

“(…) It informs the notifying institution of the transmission and specifies the transmission date.”.

2) Notifications in relation to free provision of services by a credit institution

The form included in CEBS' guidelines which shall be used by credit institutions wishing to provide services or carry on business in another Member State also provides for a blank “MiFID” matrix. Annex 3 “Notification of free provision of services by a credit institution” (French and English version) of Circular CSSF 07/326 is thus replaced by the new standard form of Annex 3 included in this circular.

Point 53 of Circular CSSF 07/326 is replaced in a concomitant manner by the following text:

“53. Any credit institution incorporated in Luxembourg wishing to provide services or carry on business within the territory of another Member State for the first time under the regime of free provision of services, shall notify to the CSSF which banking activities listed in Annex I of LFS and, where applicable, which investment services and/or activities as well as ancillary services as defined in Sections A and C of Annex II of LFS it wishes to perform. To this end, the CSSF requires credit institutions to use the form in Annex 3 of this circular which incorporates Annex 1 of “Guidelines for passport notifications” drawn up by CEBS.”

3) Notifications by an investment firm

Finally, this circular adapts the forms to be used for notifications of cross-border activities by investment firms incorporated under Luxembourg law. Annex 2

“Notification for branch establishment by an investment firm” (French and English version) and Annex 4 “Notification of free provision of services by an investment firm” (French and English version) of Circular CSSF 07/326 are, thus, replaced by the new standard forms of Annex 2 and Annex 4 included in this circular.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General

Annexes:

- Annex 1 Notification for branch establishment by a credit institution
- Annex 2 Notification for branch establishment by an investment firm
- Annex 3 Notification of free provision of services by a credit institution
- Annex 4 Notification of free provision of services by an investment firm