

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 11 October 2010

To all investment firms and branches of
non-EU investment firms

CIRCULAR CSSF 10/486

**Re: Fight against money laundering and terrorist financing:
amendment of certain provisions of Circular CSSF 03/113**

Ladies and Gentlemen,

The purpose of this circular is to amend certain provisions of Circular CSSF 03/113 relating to the practical rules on the role of external auditors of investment firms.

The following points of Circular CSSF 03/113 relating to the practical rules on the role of external auditors of investment firms shall be amended by this circular:

I. Replacement of general references:

All references to Circular IML 94/112 on combating money laundering and the prevention of the use of the financial sector for the purpose of money laundering are replaced by references to Circular CSSF 08/387 on combating money laundering and terrorist financing and the prevention of the use of the financial sector for the purpose of money laundering and terrorist financing and to Circular CSSF 10/476.

Likewise, all references to money laundering are replaced by the terms “money laundering and terrorist financing” and all references to the prevention of money laundering shall be replaced by the terms “prevention of money laundering and terrorist financing”.

II. Amendment to Chapter I “Mandate”:

- The first paragraph of point 3 shall be replaced by the following:

“• verify compliance with Chapter 5 of Part II of the law on the financial sector, the law of 12 November 2004 on the fight against money laundering and terrorist financing, Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the law of 12 November 2004 on the fight against money laundering and terrorist financing, Regulation (EC) 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, international acts relating to the fight against terrorist financing brought to the attention of the institutions through CSSF circulars, CSSF regulations as regards the fight against money laundering and terrorist financing, CSSF circulars in these matters, as well as the proper application of internal procedures regarding the prevention of money laundering and terrorist financing.”

- A new fifth paragraph is added to point 3:

“• assess the investment firm’s analysis of the money laundering or terrorist financing risk it faces and verify if the procedures, infrastructures and controls with respect to the fight against money laundering and terrorist financing set up by the investment firm, as well as the extent of the measures taken by it, are appropriate considering the money laundering and terrorist financing risk to which the investment firm is or might be exposed notably through its activities, the nature of its customers and the products and services offered.”

III. Amendment to Chapter III. A “Annual long-form audit report - General principles”:

- The third paragraph of point III.A “General principles” shall be amended as follows: “The long-form audit report must be concise, clear and critical, setting out, for each point listed in the schema below, the main observations made, allowing a precise and justified assessment of the organisation, the internal control system, the financial situation and the risks incurred by the audited investment firm, including those with respect to money laundering and terrorist financing.”

IV. Amendment to Chapter III.C. “Comments relating to the long-form report schema”:

- In point 3.6. “Internal control”, the first sentence shall be replaced as follows: “The long-form report shall describe the organisation of the internal control system and of the internal audit function and assess its appropriateness with respect to the investment firm’s business type and volume and the real and potential money laundering and terrorist financing risks to which it is exposed.”

- In point 4 “Activities and analysis of related risks”, the following paragraph is added after the indent “- reputational risk.”: “The long-form report describes and assesses how the institution controls and manages its legal and reputational risk, including with respect to money laundering and terrorist financing”.

- Point 8 shall be replaced by the following:

“8. Professional obligations as regards the prevention of money laundering and terrorist financing. The long-form report shall describe the procedures set up by the investment firm concerning the prevention of money laundering and terrorist financing as required for compliance with or as defined in: Chapter 5 of Part II of the law on the financial sector, the law of 12 November 2004 on the fight against money laundering and terrorist financing, the Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the law of 12 November 2004 on the fight against money laundering and terrorist financing, Regulation (EC) 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, international acts on the fight against terrorist financing brought to the attention of the professionals through CSSF circulars, CSSF regulations as regards the fight against money laundering and terrorist financing and CSSF circulars in these matters.

The long-form report shall provide, in particular:

- a description of the customer acceptance policy;
- an assessment of the appropriateness of the investment firm’s internal procedures concerning the prevention of money laundering and terrorist financing, as well as their compliance with the provisions of Chapter 5 of Part II of the law on the financial sector, the law of 12 November 2004 on the fight against money laundering and terrorist financing, the Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the law of 12 November 2004 on the fight against money laundering and terrorist financing, Regulation (EC) 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, international acts on the fight against terrorist financing brought to the attention of the institutions through CSSF circulars, CSSF regulations as regards combating money laundering and terrorist financing, CSSF circulars in these matters. The external auditor shall also appraise the proper implementation of the procedures concerned. Moreover, the outcome of these controls shall be presented in the summary schedule “Measures to combat money laundering and terrorist financing and on the prevention of the use of the financial sector for the purposes of money laundering and terrorist financing” of IRE. This IRE schedule, which shall be completed with the comments “yes”, “no” and “n/a” (non applicable), shall be completed, where applicable, by figures or supplementary explanations. The auditor may also refer to the outcome of these controls in other sections of the long-form report;

- a statement on the existence of a regular control of compliance with procedures by the internal audit department;
- employee training and information on the detection of money laundering and terrorist financing operations;
- historical statistics concerning the detected suspicious transactions, the number of suspicious transaction reports filed by the investment firm to the State prosecutor (Financial Intelligence Unit), as well as the total amount of funds involved;
- assessment of the investment firms's analysis of money laundering and terrorist financing risks to which it is exposed. The auditor shall verify if the procedures, infrastructures and controls with respect to combating money laundering and terrorist financing set up by the investment firm, as well as the extent of the measures taken by the investment firm, are appropriate considering the money laundering and terrorist financing risk to which the investment firm is or might be exposed notably through its activities, the nature of its customers and the products and services offered.

The *réviseur d'entreprises agréé* (approved statutory auditor) shall verify if the investment firm complies with its obligations on customer and beneficial owner identification.

The *réviseur d'entreprises agréé* (approved statutory auditor) shall state how the sample of reviewed files was selected, as well as the coverage ratio of the population (number of files reviewed / total number of customers; volume of reviewed customer assets / total volume of customer assets).

Where the *réviseur d'entreprises agréé* (approved statutory auditor) identifies cases of non-compliance with the legal or regulatory provisions or deficiencies, the *réviseur d'entreprises agréé* (approved statutory auditor) shall give detailed indications enabling the CSSF to assess the situation (number of pending incomplete files as a percentage of the total number of reviewed files, details of the deficiencies identified, etc.). (also refer to Chapter V "Reporting to the CSSF by virtue of Article 54(3) of the law on the financial sector" below.)"

Note: It should be noted that the *réviseurs d'entreprises agréés* (approved statutory auditors) shall also inform the CSSF of all the denunciations made under Article 5 of the law of 12 November 2004 on the fight against money laundering and terrorist financing and which concern a professional of the financial sector under the supervision of the CSSF.

- The second paragraph of point 10 shall be replaced by the following:

"This control shall be handled in a separate Chapter in the long-form report for every individual branch and must cover the prudential aspects (financial situation, risks,

organisation) as well as compliance with the provisions applicable to the prevention of money laundering and terrorist financing, as well as rules of conduct and it must provide the following information:”

- Point 6 is amended as follows:

“• implementation and verification of compliance with procedures as regards the prevention of money laundering and terrorist financing in the branch.”

A new point 10 is added:

“• analysis of risks incurred by the branch, including money laundering and terrorist financing risk;”

V. Amendment of Chapter IV “Consolidated long form audit report”:

Paragraph 4 shall be amended as follows: “The aim of the consolidated long-form report is to provide an overview of the group’s situation and to give indications as to the management, organisation and activities of the group, as well as on the risk structure of the group, including with respect to money laundering and terrorist financing.”.

This circular comes into force with immediate effect.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

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