

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

Luxembourg, 18 October 2016

To all credit institutions and investment firms incorporated under Luxembourg law, to the “Entreprise des postes et télécommunications”, to the branches of non-EU credit institutions and investment firms, as well as to UCITS management companies and to alternative investment fund managers whose authorisation includes the management of portfolios on a discretionary, client-by-client basis

**CIRCULAR CSSF-CPDI 16/02**

**Re : Scope of the deposit guarantee and the investor compensation**

Ladies and Gentlemen,

1. This circular aims at clarifying certain eligibility criteria with respect to the deposit guarantee and the investor compensation, in accordance with Titles II and III of the amended law of 18 December 2015 on the failure of credit institutions and certain investment firms (hereinafter “law of 2015”). The circular reiterates the exclusions defined in Circular CSSF 15/630 and extends them to the “Système d’indemnisation des investisseurs Luxembourg” (“SIIL”).
2. This circular is addressed to the members of the “Fonds de garantie des dépôts Luxembourg” (“FGDL”) as well as to the members of the SIIL, namely to all credit institutions incorporated under Luxembourg law, to the “Entreprise des postes et télécommunications”, exclusively for its provision of postal financial services, to Luxembourg branches of non-EU credit institutions (hereinafter “credit institutions”), as well as to investment firms incorporated under Luxembourg law, to Luxembourg branches of non-EU investment firms, as well as to UCITS management companies and to alternative investment fund managers whose authorisation includes the management of portfolios on a discretionary, client-by-client basis (hereinafter “investment firms”).
3. Regarding the delimitation between the guarantee offered by the FGDL and the SIIL, the CPDI points out that pursuant to Article 196(6) of the law of 2015, the FGDL is competent for any claim that results from a deposit within the meaning of Article 163, point 6, in case of the failure of a credit institution, even if the holder of the deposit is an

investment firm acting on behalf of its clients or if the deposit is subject to a discretionary management mandate by an investment firm.

The money referred to in Article 195(1), point 1, encompasses money that a member of the SIIL holds on behalf of its clients, including clients' money that this member deposits at a credit institution. In case of failure of this member of the SIIL, investors are compensated by the SIIL. If however the credit institution that receives the money in deposit is unable to return the money, the reimbursement is made by the FGDL, provided that the credit institution is a member of the FGDL.

The money covered by the SIIL also includes money resulting from investment business that has not yet been credited to an account at the moment of a member's failure, such as for instance coupons or dividends that have not been cashed in yet, settlements of derivatives, sale proceeds of financial instruments that have not been credited to an account yet, or money resulting from other temporary situations.

4. Regarding accounts whose holders are not absolutely entitled, Articles 174 and 196(5) of the law of 2015 apply to omnibus accounts with members of the FGDL/SIIL, that investment firms or credit institutions use to deposit the money or instruments of their customers, provided that these customers are eligible and identified or identifiable before the guarantee is triggered. These provisions also apply to trusts and fiduciary arrangements.

Compliance with the requirement to inform customers referred to in Article 185 of the law of 2015 is achieved when the credit institution informs the holder of the account. In case of the depositary's failure, the reimbursement for all the persons that are absolutely entitled is transferred to a new omnibus account opened by the holder of the distressed account.

5. In line with the outdated Circular CSSF 15/630, Soparfis, family wealth management companies (SPF), securitisation undertakings, offshore investment vehicles or companies and foundations (other than non-profit foundations governed by the amended law of 21 April 1928 on non-profit associations and foundations<sup>1</sup>) set up in the context of estate planning or wealth management are assimilated to financial institutions, and are thus excluded from the FGDL/SIIL's guarantee. The deposits (money and instruments) made by insurance companies in the context of unit linked life insurance policies or insurance wrappers are also excluded.

Articles 174 and 196(5) of the law of 2015, apply neither to the entities mentioned in the previous subparagraph, nor to collective investment undertakings.

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<sup>1</sup> Non-profit foundations governed by the amended law of 21 April 1928 on non-profit associations and foundations are covered by the FGDL/SIIL and are treated as a single depositor/investor.

6. Persons who are absolutely entitled are deemed identifiable if the depositor/investor has informed the depositary (member of the FGDL/SIIL) who holds the deposits, respectively the money or instruments, that he acts on behalf of third parties, that he has communicated the number of persons who are absolutely entitled and the amount owed to each of them, and that he is able to provide to the depositary or to the CPDI the identity of the persons who are absolutely entitled, upon request of the CPDI in case of the depositary's failure.

7. The CPDI has decided to implement the exception provided for under Article 196(4) of the law of 2015. Hence, the claims relating to joint investment business to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature which has no legal personality are, for the purpose of calculating the limits provided for in Article 196(3), aggregated and treated as if arising from an investment made by a single investor and only one single compensation is due under the coverage.

For any questions regarding this circular, please contact Mr Laurent Goergen ([laurent.goergen@cssf.lu](mailto:laurent.goergen@cssf.lu)).

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER  
Conseil de protection des déposants et des investisseurs

On behalf of the CPDI,  
Claude SIMON  
Chair of the CPDI