

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

Luxembourg, 6th December 2002

To all Luxembourg undertakings for
collective investment

CIRCULAR CSSF 02/81

Re: Guidelines concerning the task of auditors of undertakings for collective investment

Ladies and Gentlemen,

The purpose of this circular is to set out the rules concerning the scope of the audit of the annual accounting documents and the content of the audit reports to be drawn up in this context, pursuant to the Law of 30th March, 1988 relating to undertakings for collective investment (“UCIs”), as amended by the Law of 17th July, 2000.

This circular intends to define the role and task of the auditor in the context of the audit of the accounting documents provided for by law. The task of the auditor is not limited to the audit of the accounting documents but also covers the analysis of the operation and procedures of the UCI.

It is understood that the task of the auditor may vary depending on the risks existing in the markets in which the UCI is active and the quality of the control mechanisms implemented at the level of the UCI.

This circular does not amend the contents of the reports on the annual accounts to be established pursuant to Schedule B as provided for by the law, but aims to specify the subjects which need to be developed in the long form report because that report constitutes, together with the report on the annual accounts and the management letter, an important source of information for the CSSF in the performance of its supervisory functions.

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I. Mandate

The auditor is appointed by the general meeting of shareholders of the UCI. For common funds, the auditor is appointed by the board of directors of the management company. The board of directors of the UCI or of the management company of the UCI must subsequently specify in writing to the auditor the terms of engagement which shall contain at least the following provisions:

1. The audit of the annual accounts has to be undertaken in accordance with the working recommendations of the Luxembourg Auditors' Institute¹. In this context, the IRE provides for the application of the International Standards on Auditing (ISAs) published by IFAC (“International Federation of Accountants”), adapted or completed, if needed, by national legislation or practice.
2. The audit has to cover all categories of operations of the UCI whether these operations are accounted for on the balance sheet or are recorded off-balance sheet. The mandate given to the auditor cannot exclude from its scope a category of operations or a specific operation. The audit must also cover all risks incurred by the UCI.
3. The audit must cover all aspects of the organisation and verification of the procedures which apply to the UCI. The analysis must inter alia cover the procedures concerning compliance with the investment restrictions, control of the calculation of the NAV and reconciliations as well as the procedures relating to the valuation methods. The audit must indeed enable all information to be provided which is required for the report on the annual accounts and the long form report.
4. The mandate for the annual audit must specifically include the following tasks:
 - to check compliance with the principles established by the circulars of the supervisory authority concerning the fight against money laundering, including in particular circular IML 94/112 concerning the fight against money laundering and the prevention of the use of the financial sector for money laundering purposes and its supplements, circulars BCL 98/153, CSSF 00/21, CSSF 01/40 and CSSF 02/78, as well as the correct application of internal procedures for the prevention of money laundering;
 - to check compliance with all other circulars applicable to UCIs.
5. The audit of the annual accounts as defined hereabove has to be documented on the one hand by a report on the annual accounts (see Chapter II. hereunder) and on the other hand by a long form report (see Chapter III. hereunder).

In general, the UCI must immediately inform the CSSF in case the auditor resigns from its mandate before the end of the term or if the auditor envisages not to seek a reappointment.

¹ Institut des Réviseurs d'Entreprises luxembourgeois (IRE)

In the same way, the UCI must notify the CSSF, with an indication of the reasons, of its intention to terminate the appointment of the auditor. The CSSF will in respect of each request for replacement of the auditor analyse the reasons for the proposed change and will assess if the UCI has, in the procedure for the appointment of a new auditor, given due regard to the competence and resources of the latter in view of the type and volume of the activities of the UCI.

II. Report on the annual accounts

The report on the annual accounts contains the auditor's attestation (a) and is to be published in accordance with Article 85 (1) of the Law of 30th March, 1988 relating to undertakings for collective investment.

In the report on the annual accounts, the auditor issues its attestation in accordance with the ISA 700121² standards as adopted by IRE.

In accordance with Article 86 (2) of the Law of 30th March, 1988 relating to UCIs, the report on the annual accounts has to contain a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule B annexed to the prementioned law, as well as any significant information which will enable investors to make an informed judgement on the development of the activities and the results of the UCI.

In case the auditor announces to the UCI that it will issue a qualified attestation or that it will refuse to certify the accounts, the UCI concerned must immediately inform the CSSF (see also Chapter IV. "Reporting to the CSSF pursuant to Article 89 (3) of the law relating to UCIs" hereunder).

The report on the annual accounts has in any case to be submitted to the CSSF within a period of four months from the end of the period to which such report relates.

III. Long Form Report

A. General principles

The purpose of the long form report is to report on the findings of the auditor in the course of its audit concerning the financial and organisational aspects of the UCI comprising inter alia its relationship with the head office, the custodian and the other intermediaries (the investment managers, the transfer agents, the distributors, etc.).

The long form report must be concise, clear and critical.

² International Standard on Auditing n° 700: The Auditor's report on financial statements

It is not intended to be made available to the public. It is issued for the exclusive use by the board of directors of the UCI or the management company of the UCI as well as the CSSF.

It must detail for every item listed under III.B., the verifications which are essential to permit a precise and informed judgement on the organisation and the financial statements of the UCI.

The auditor must, in the context of its usual audits carried out in accordance with recommendations RRC n° 21122³ of IRE, give its opinion on the compliance with the investment restrictions set out by law and/or regulations and must also obtain the assurance that the systems which have been put into place permit a proper calculation of the net asset value.

The auditor has to indicate the NAV calculation errors and the infringements to the investment restrictions which it will have ascertained during its audit and which have nevertheless not been notified to the CSSF in accordance with CSSF circular 02/77.

In the long form report, the auditor must also analyse the NAV calculation errors or the failures to comply with investment rules which have been the subject of a notification in application of CSSF circular 02/77, but for which the amount of indemnification did not exceed EUR 25,000 and for which the amount to be reimbursed to any one shareholder did not exceed EUR 2,500 as set out in CSSF circular 02/77.

The auditor has to communicate in detail the weaknesses and the areas to be improved which it will have ascertained during its audit. This communication can be made in the context of the long form report or through a letter of recommendation (management letter) addressed to the board of directors of the UCI or the management company of the UCI. The findings of the auditor must mandatorily be supplemented by comments of the board of directors of the UCI or the management company of the UCI. In case a management letter is drawn up, it must be annexed to the long form report. If the auditor does not issue a management letter, this must be expressly noted in the long form report.

In accordance with Chapter P of circular IML 91/75 of 21st January, 1991⁴, the UCI must immediately communicate to the CSSF, without having been invited to do so, all other documents issued by the auditor in the context of its annual audit as referred to hereabove.

The long form report has to be remitted to the CSSF within a period of four months from the end of the period to which the report refers.

³ Recommendation on accounting audit n° 21: The audit of the financial statements of the UCIs.

⁴ Circular IML 91/75 relating to the revision and remodeling of the rules to which undertakings for collective investment governed by the Law of 30th March, 1988 on undertakings for collective investment are subject to.

B. Structure of the long form report

The long form report must be drawn up in accordance with the lay out featured below. The layout corresponds to the minimum information to be detailed by the auditor in its report. However, the layout of the report can be adapted to the volume and the complexity of the activity and to the structure of the UCI. If appropriate, the auditor will have to supplement the layout set out below by those items which it will find necessary. If one particular item of the layout does not apply to a UCI, the auditor will have to explicitly mention this fact under the item concerned.

1. Organisation of the UCI

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 - 1.1.2. Situation where the audit and verifications are made by the auditor of the UCI
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 - 1.2.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the custodian
 - 1.2.2. Situation where the audit and verifications are made by the auditor of the UCI
 - 1.2.2.1. Assessment of procedures
 - 1.2.2.2. Computer systems
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- 1.3. Relationship with the management company
- 1.4. Relationship with other intermediaries

2. Audit of the operations of the UCI

- 2.1. Control of anti-money laundering rules
- 2.2. Valuation methods
- 2.3. Audit of the risk management system
- 2.4. Specific audits
- 2.5. Assets and liabilities and profit and loss account
- 2.6. Publication of the NAV

3. Internet
4. Complaints from investors
5. Follow-up on problems identified in preceding long form reports
6. General conclusion

C. Explanatory comments on the structure of the long form report

1. Organisation of the UCI

The operations of a UCI require the recourse to specialised service providers in Luxembourg and abroad.

Under the provisions of the Law of 30th March, 1988 relating to undertakings for collective investment (as amended), the head office of the UCI must be located in Luxembourg. The prementioned law also provides that the custodian of a UCI must be established in Luxembourg. The entities which exercise one or several functions in relation with the head office and/or the custody for the UCI play a significant role in the operation of a UCI.

To the extent that the custodian and the professional of the financial sector which carries out the head office duties for the UCI have been subjected by their auditor to an audit on the activities exercised for UCIs which covers at least the items detailed under paragraphs 1.1.2. and 1.2.2. herebelow, the auditor of the UCI may refer to the long form reports of the auditor of the custodian or the professional of the financial sector on dealing with the services provided to undertakings for collective investment.

In case the auditor of the UCI does not make use of that possibility and considering the important role in the organisation of the UCI assumed by the entities which carry out the function of head office and/or custodian, the auditor must itself undertake the verifications and controls detailed in the pre-mentioned paragraphs. In that case the auditor of the UCI will have to advise the board of directors of the UCI or the management company of the UCI that it needs to have access to certain information on the entity concerned in order to carry out the verifications and audits required by this circular. The board of directors of the UCI or of the management company of the UCI must in that case request the entity concerned to provide access to the information which is necessary for the auditor of the UCI to accomplish its mission.

For common funds the management of which is performed by a management company, the auditor of the UCI will have to carry out certain audits and verifications as defined under paragraph 1.3. hereafter. The auditor of the UCI may for these tasks refer to the long form report of the auditor of the management company if such report covers at least the items detailed under paragraph 1.3. In case it does not make use of that possibility, it must call upon the board of directors of the management company of the common fund. The board of directors of the management company must then make available to the auditor all information necessary in relation to the

activities exercised by the management company for the common fund and, in case the management company has delegated certain important administration functions to a specialised entity, the board will have to request that entity to provide access to the information required.

It also must be noted, that in case the various head office functions are performed by more than one professional of the financial sector, the auditor of the UCI must give its opinion on the procedures regarding the coordination and general supervision of the activities of the UCI.

In respect of the relationship of the UCI with other service providers established in Luxembourg and/or abroad, reference is made to paragraph 1.4. below.

1.1. Head office

1.1.1. *Situation where the auditor of the UCI relies on the audit report of the auditor of the head office*

The auditor of the UCI must, in its long form report, specify the audit report of the auditor of the head office he has relied upon. He must in this context provide the following data:

- the name of the auditor of the head office
- the date of the audit report
- if applicable, the audit report in accordance with international standard ISA 402, type B or in accordance with US standard SAS 70, type 2, or in accordance with any other equivalent standard, as well as the name of the auditor which has established that report.

In cases where the head office functions are fulfilled by more than one entity, the auditor of the UCI has to indicate in its long form report the data mentioned hereabove in respect of each of these entities individually.

1.1.2. *Situation where the audit and verifications are made by the auditor of the UCI*

1.1.2.1. Assessment of procedures

In its long form report, the auditor must indicate the exact functions performed by the head office on behalf of the UCI. In case these functions are split among more than one professional of the financial sector and/or management body of the fund, the auditor must in its report indicate the allocation of the tasks between the different parties.

The auditor must specify if the head office or the different parties are in possession of a procedures manual describing the functions which they perform on behalf of the UCI and which are, inter alia, set forth in Chapter D. of IML Circular 91/75.

In addition, the auditor has to verify if specific procedures have been established in connection with the following items:

- a) internal control procedure on the origin of funds (anti-money laundering procedures),
- b) valuation procedure of the portfolio by the accounting agent, distinguishing between the different types of investment and insisting in particular on unquoted and illiquid securities,
- c) internal control procedures on the investment policy and restrictions,
- d) internal control procedure on the accuracy of the NAV calculation,
- e) recording and settlement procedure of subscription/redemption orders of units/shares,
- f) validation and recording procedure in relation to the acquisition and sale of securities.

The auditor must give its opinion on the adequacy of the procedures put in place.

Finally, the auditor must indicate if the human resources made available are sufficient to ensure a proper execution of the contractual obligations of the entity for the relevant UCI.

In case of splitting of the head office functions, it goes without saying that, in addition, the auditor must give its opinion on the procedures regarding the coordination and the general supervision of the activities of the UCI.

1.1.2.2. Computer systems

As regards computer systems, the auditor will give a brief description of the software used by the head office and of the functions for which the software is used.

The auditor must indicate whether, during the financial year under review, significant changes have occurred with respect to the computer system and whether problems were encountered at the time of migration from one system to another.

The auditor must also give its opinion on the adequacy of the computer system in consideration of the volume of the activities of the relevant UCI and, if applicable, in respect of pooling or co-management techniques.

With regard to the accounting system for the calculation of the NAV, the auditor will give its opinion on whether the accounting system is adequate in view of the type of investments made by the UCI. Manual accounting operations and valuations and the internal control procedures relating thereto must be pointed out.

The auditor must also verify if appropriate measures to safeguard the confidentiality of information have been put into place.

In addition, the auditor must outline the general principles of the contingency plan in place which should permit the head office to operate normally in case of a breakdown of its computer systems, including its Internet connections.

When use is made of an external processing unit, whether based in Luxembourg or abroad, the auditor must clearly indicate which functions have been sub-delegated and to whom.

The auditor must furthermore give its opinion on compliance with the provisions of item III.1. of Chapter D. of IML Circular 91/75. Generally, the auditor must highlight the significant deficiencies which it will have detected during its audit and must describe them in a detailed manner so that the CSSF can assess the situation.

1.2. Custodian

1.2.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the custodian

The auditor of the UCI must in its long form report, specify the audit report of the auditor of the custodian he has relied upon. He must in this context provide the following data:

- the name of the auditor of the custodian
- the date of the audit report
- if applicable, the audit report in accordance with international standard ISA 402, type B, or in accordance with US standard SAS 70, type 2 or in accordance with any other equivalent standard, as well as the name of the auditor which has established the report.

The auditor of the UCI must in any case give its opinion on the result of the reconciliations between assets accounted for by the UCI and the assets deposited with the custodian as well as on the off-balance sheet operations of the UCI.

In case the auditor, during its audit, notes serious problems at the level of the reconciliation between the positions accounted for by the UCI and those registered with the custodian, it must make a detailed description of those problems in the long form report.

1.2.2. Situation where the controls and verifications are made by the auditor of the UCI

1.2.2.1. Assessment of procedures

The long form report indicates if the entity is in possession of a procedures manual describing the duties of the custodian and whether this manual includes general procedures and specific procedures relating to the activities undertaken. The long form report will describe in particular the correspondent bank network.

The long form report will describe the policy of the entity as regards the selection criteria of those counterparties. The auditor will give an outline of the third parties with which the entity has entered into a relationship and it will indicate if these counterparties have been retained in accordance with the policy of the entity.

In case the custodian exercises also part or all of the head office functions, the long form report has to provide explanations on the separation of duties, specifically between custody and head office duties.

In case the auditor notes deficiencies, the auditor will have to indicate exactly which obligation(s) the custodian has not complied with.

1.2.2.2. Computer Systems

As regards computer systems, the auditor will give a brief description of the software used by the custodian.

The auditor must indicate whether, during the financial year under review, significant changes have occurred with regard to the computer system and whether problems were encountered at the time of migration from one system to another.

The auditor must give its opinion on the adequacy of the computer system and the available human resources for ensuring the proper execution by the credit institution of its contractual obligations towards the UCI concerned.

1.2.2.3. Result of the reconciliations

The auditor must indicate whether the custodian has established procedures concerning the reconciliation of positions accounted for by the UCI and those registered with the custodian. It will also give an opinion on the adequacy of those procedures.

The auditor must give its opinion on the results of the reconciliation between the positions accounted for by the UCI and the positions registered with the custodian.

In case the auditor would during its audit identify serious problems as regards the reconciliation between the positions accounted for by the UCI and those registered with the custodian, the auditor must give a detailed description of the problems in the long form report.

1.3. Relationship with the management company

The auditor verifies whether the management company assumes its functions in compliance with legal and contractual obligations.

It indicates in its long form report which functions are performed by the management company on behalf of the UCI. To the extent that the management company performs all or part of the administration functions, the auditor has to proceed as provided for under item 1., paragraph 1.1.1. or 1.1.2. hereabove.

In case the auditor becomes aware of major problems, it has to provide a detailed description of those problems in the long form report of the UCI.

1.4. Relationship with other intermediaries

In the context of the relationship of the UCI with other intermediaries, comprising *inter alia* the investment managers, the distributors, etc., the auditor must indicate in its long form report if the activity of the UCI has been hindered by major problems encountered in the course of the operations conducted with these other intermediaries.

If this is the case, the auditor must describe in a detailed manner the problem(s) encountered during its analysis in order to enable the CSSF to assess the situation.

2. Audit of the operations of the UCI

2.1. Audit of anti-money laundering rules

As the head office of a UCI deals with subscription, redemption and transfer requests of units or shares of UCIs, it has to ensure compliance with the provisions set forth in the circulars relating to the fight against money laundering, comprising circulars IML 94/112, BCL 98/153, CSSF 00/21, CSSF 01/40 and CSSF 02/78.

IML circular 94/112 has however taken into account the specific manner in which UCIs are marketed, by dispensing the head office of a UCI in Luxembourg under certain conditions from the obligation to carry out itself the identification of investors in case it makes use of professionals of the financial sector subject to identification obligations equivalent to those provided for by Luxembourg law. In this context, it has to be reminded that in respect of all intermediaries participating in the placement of the units or shares of UCIs, the head office has to systematically verify the conditions provided for by circular IML 94/112 concerning equivalent identification. That verification has to cover *inter alia* the status of the intermediary and its submission to the FATF recommendations. If the conditions of an equivalent identification provided for by circular IML 94/112 are not met, the head office of the UCI in Luxembourg must itself carry out the identification of the investors in the UCI.

On the basis of the description provided by the head office, the auditor must analyse the distribution channel of units or shares of the UCI in order to determine if the head office complies with its obligations concerning the fight against money laundering.

In addition, the auditor must check whether the head office supervises abnormal transactions.

In this context, the auditor has to indicate its method of selection of sample files checked and the percentage of the total transactions covered.

In case a non-compliance is noted, the auditor will have to provide precise indications to the CSSF enabling it to make an appreciation of the situation (number of files which are incomplete, detail of the failures noted, etc.).

In case the auditor of the UCI makes use of the possibility to base itself on the audit report of the auditor in charge of the review of the entity which is

responsible for compliance with anti-money laundering rules, the long form report must provide the following details:

- name of the auditor of the entity in question
- date of the audit report

2.2. Valuation methods

The Law of 30th March, 1988 provides that, unless otherwise provided for in the management regulations or the articles of incorporation, the valuation of the assets shall be based ‘in case of officially quoted security’ on the latest known stock exchange quotations unless such quotations are not representative. For securities not so quoted and for securities which are so quoted but for which the latest quotation is not representative, these articles provide that the valuation must be based on the probable realisation value which must be estimated with care and in good faith.

The auditor will thus check if the valuation methods are applied in accordance with the procedures and the rules determined by the management regulations or the articles of incorporation and if these methods are also applied in a consistent manner.

The auditor must *inter alia* verify the application and the sincerity of the valuation rules of the securities portfolio, securities’ lending/borrowing, repurchase and reverse repurchase agreements, sale with right of repurchase agreements, transactions, futures, swaps and options.

In connection with the valuation of portfolio securities, it must in particular insist on unquoted securities and illiquid securities.

In addition, the auditor will request the board of directors of the UCI or the management company of the UCI to provide details on the transactions undertaken by the UCI to enable the auditor to verify by sample tests if these transactions were undertaken at arm's length.

In case of non-compliance with the valuation methods described in the procedures or in the management regulations or the articles of incorporation, the auditor must provide detailed information enabling the CSSF to assess the situation.

2.3. Control of the risk management system

The board of directors of the UCI or of the management company of the UCI is supposed to have put into place the necessary controls to ensure compliance with the investment restrictions and policies of the UCI as well as the management of the risks encountered by the UCI. Either it assumes itself all or part of the above mentioned controls or it delegates this duty to one or several third parties.

The auditor must indicate the responsible persons/entities appointed by the board

of directors of the UCI or the board of directors of the management company of the UCI which are entrusted with the control of the different risks for which the UCI is exposed. The auditor will also have to specify the frequency with which risk controls are made.

The long form report must indicate whether the control system put into place within those entities covers at least the risks inherent to the policy and the investment risks of the UCI concerned, such as:

- credit/counterparty risk
- market risk
- settlement risk
- foreign exchange risk

If appropriate:

- interest rate risk
- liquidity risk
- risk on derivative instruments

The long form report must provide an analysis and an assessment of the systems put in place by the UCI to control and manage the different risks to which the UCI is exposed when it carries out its activities.

If shortfalls are noted, the auditor must give precise indications enabling the CSSF to assess of the situation.

2.4. Specific audits

In the context of his mission, the auditor must also proceed to specific audits. These are the audit of the compliance with the investment policy and the investment restrictions and the audit of the calculation of the NAV.

The auditor must under this item analyse every NAV calculation error and every non-compliance with the investment rules for which the amount of indemnification did not exceed EUR 25,000 and for which the amount to be reimbursed to any one investor did not exceed EUR 2,500 as set out in CSSF circular 02/77.

Under this item, the auditor must also indicate the following:

- material errors which the auditor has detected during its mission and which should have been notified in accordance with the provisions of CSSF circular 02/77;
- cases of non-compliance which the auditor has detected during its mission and which should have been notified in compliance with the provisions of CSSF circular 02/77.

In those cases, the auditor will in its long form report describe the material errors and the cases of non-compliance with investment rules identified during its audit and which have not been notified to the CSSF in compliance with CSSF circular 02/77. The auditor will thereafter deal with these errors and cases of non-compliance with the investment rules in accordance with the procedures set forth in CSSF circular 02/77.

In case no significant NAV error or in case of non-compliance with the investment policy will have been identified, the auditor must expressly state so in its long form report of the UCI.

2.5. Assets and liabilities and profit and loss account

The auditor will comment the different items of the consolidated⁵ balance sheet in a clear and precise manner. The auditor must check the existence of those items, their amounts and their adequate accounting treatment, as well as the consistent application of accounting principles.

In addition, the auditor must examine the sale and purchase transactions of securities made during the two weeks preceding and the two weeks following the end of the financial year (this period needs to be extended if suspicious operations have been detected), in order to determine whether transactions have been entered into for the purpose of “window dressing”.

Furthermore, the auditor will have to collect statistics on portfolio turnover in order to make an appreciation whether transactions have been entered into for the purpose of “churning”.

The auditor must also comment on the various items of the combined profit and loss account. The auditor will have to check the existence of those items, their amounts and their adequate accounting treatment, as well as the consistent application of the accounting principles.

During its mission, the auditor will have to pay particular attention to the performance fees which may be payable to the investment managers.

The auditor will also have to receive from the board of directors of the UCI or of the management company of the UCI a confirmation to the effect that neither the investment managers nor any of their connected parties have received rebates from brokers and a confirmation on any arrangements concerning the payment of “soft commissions” in the context of the activities of the UCI. In case “soft commissions” are paid, the auditor will have to describe in the long form report the arrangements in relation thereto.

In addition, the auditor will need to receive from the board of directors of the UCI or the management company of the UCI a confirmation indicating whether there

⁵ UCIs are not required to produce consolidated accounts. What is meant here is the combined balance sheet of the multiple compartment UCIs consisting in the combination of the balance sheets of each compartment.

have been any commission rebates and, in the affirmative, describe the nature thereof.

Finally, the auditor will ask for a list of all costs, comprising transaction costs, which have been allocated to the UCI. It is recommended that this list refers where possible to the gross amount of the costs payable by the UCI. In relation to the most significant costs, the auditor will have to determine whether they have been calculated in compliance with the provisions of the applicable agreements.

In case of irregularities or shortfalls, the auditor will have to provide precise indications enabling the CSSF to assess the situation.

2.6. Publication of the NAV

The auditor shall indicate if the UCI has published its NAV in accordance with Article 92 of the Law of 30th March, 1988.

In case of non-compliance with this legal requirement, the auditor will indicate in detail the origin of this shortfall.

3. Internet

The long form report will indicate whether the UCI makes directly use of the Internet as a communication or distribution channel.

4. Complaints from investors

The auditor will query with the board of directors of the UCI or of the management company of the UCI whether, during the course of the financial year under review, complaints have been received by the head office in Luxembourg and to which the UCI had to respond.

If this is not the case, the auditor will specifically mention this in its long form report.

If complaints have been received, the auditor will indicate how many complaints have been received by the UCI in Luxembourg.

5. Follow-up on problems identified in preceding reports on the audit of the activities of the UCI

The auditor indicates in this part of its long form report the follow-up on irregularities and important weaknesses identified during its preceding audits and which are detailed either in an earlier long form report or in a separate management letter addressed to the board of directors of the UCI or of the management company of the UCI (see also Chapter III.A. “General Principles” hereabove).

6. General conclusion

In its general conclusion the auditor must give its opinion on all the important items of its control in order to give a general view on the situation of the UCI.

More specifically, the auditor must summarise the main comments and conclusions contained in the long form report. It will also indicate the main recommendations and observations made to the board of directors of the UCI or the management company of the UCI as well as the latter's response thereto. In case the auditor issues a separate management letter to the board of directors of the UCI or of the management company of the UCI, it is sufficient that the general conclusion refers, for this part, to that document which, in such case, must be annexed to the long form report (see also Chapter III.A. "General Principles" hereabove).

IV. Reporting to the CSSF pursuant to Article 89(3) of the law relating to UCIs

In compliance with paragraph (3) of Article 89 as amended of the law on UCIs, introduced by the Law of 29th April, 1999⁶, the auditor must report to the CSSF any fact or decision it has become aware while carrying out the audit of the accounting information contained in the annual report of an UCI or any other legal task concerning an UCI where such fact or decision is liable to:

- constitute a material breach of the provisions of the law on UCIs or the regulations adopted for its execution, or
- affect the continuous functioning of the UCI, or
- lead to a refusal to certify the accounts or to the expression of reservations therein.

The auditor shall likewise have the duty to report to the CSSF any fact or decision concerning the UCI and meeting the criteria mentioned hereabove of which it has become aware while carrying out the audit of the accounting information contained in the annual report of another undertaking having close links resulting from a control relationship with the UCI for which it carries out a legal task or while carrying out any other legal task concerning such other undertakings.

"Close link" resulting from a control relationship shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in Article 77 of the amended Law of 17th June, 1992 relating to the annual accounts and the consolidated accounts of credit institutions or as a result of a relationship of the same type between any individual or legal entity and an undertaking; any subsidiary undertaking of a subsidiary undertaking is also considered a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more individuals or legal persons are

⁶ Law of 29th April, 1999

-implementing Directive 95/26/EC concerning the reinforcement of prudential supervision into the Law of 5th April, 1993 relating to the financial sector (as amended) and into the Law of 30th March, 1988 on undertakings for collective investment (as amended);

-partially implementing Article 7 of Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions into the Law of 5th April, 1993 relating to the financial sector (as amended);

- operating certain other amendments to the Law of 5th April, 1993 relating to the financial sector (as amended);

-amending the grand-ducal regulation of 19th July, 1983 relating to fiduciary contracts of credit institutions.

permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

In addition, if in the discharge of its duties the auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the UCI does not truly describe the financial situation and the assets and liabilities of the UCI, it shall be obliged to inform the CSSF forthwith.

The auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the auditor has or ought to have knowledge in connection with the discharge of its duties. The same applies if the auditor ascertains that the assets of the UCI are not or have not been invested according to the regulations set out by the law or the prospectus.

In return for the duty to report to the CSSF, paragraph (3) also provides that any disclosure in good faith to the CSSF by the auditor of any fact or decision referred to in paragraph (3) does not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and will not result in liability of any kind of the auditor.

V. Final provisions

The provisions of the present circular have to be complied with in their entirety for the annual accounts of the financial years ending on or after 31st December, 2003.

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Charles KIEFFER
Director

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General