

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

Luxembourg, 19th December 2003

To all Luxembourg undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings

CSSF CIRCULAR 03/122

Concerns: Clarifications on the simplified prospectus

Ladies and Gentlemen,

The purpose of this circular is to provide more detailed information on the simplified prospectus and, more specifically, on the interpretation of certain elements of information comprised in schedule C attached to the law of 20 December 2002 relating to undertakings for collective investment (the "Law of 20 December 2002").

The circular aims to describe three elements of information of the simplified prospectus mentioned in schedule C, namely:

- the UCITS' objectives, the UCITS' investment policy and a brief assessment of the UCITS' risk profile,
- the historical performance of the UCITS,
- the other possible expenses and fees.

The circular also determines the authorisation procedure of the CSSF in relation to the simplified prospectus.

I. Introduction

Article 109(1) of the Law of 20 December 2002 regarding undertakings for collective investment imposes on undertakings for collective investment in transferable securities (UCITS) subject to part I of such law to publish a simplified prospectus.

UCITS which remain governed by part I of the law of 30 March 1988 relating to undertakings for collective investment until 13 February 2007 at the latest, are not compelled by Luxembourg law to publish a simplified prospectus. If any such UCITS nevertheless intends to publish a simplified prospectus, it must meet the requirements imposed by annex I, schedule C, for the simplified prospectus of UCITS subject to part I of the Law of 20 December 2002.

By virtue of article 112 of the Law of 20 December 2002, the essential elements of the simplified prospectus must be kept up to date.

A distinction must be made between:

- a) the sporadic updates which must be made upon the change of any essential elements of the complete prospectus and/or the management regulations / articles;
- b) the periodical updates which must be made at least once a year and which concern in particular the following elements: the historical performance, the total expense ratio and the portfolio turnover rate.

II. Definition of elements of information of schedule C

a) investment objectives, investment policy and assessment of the UCITS' risk profile

In the section *short definition of the UCITS objectives*, the simplified prospectus must give a description of the objective the UCITS seeks to achieve. If applicable, it must mention the guarantees received from any third parties as well as the limitations to such guarantees.

For UCITS, whose objective is to reproduce the composition of a specific equity index or bond index, the simplified prospectus must comprise, in addition to the aforementioned indications, information which permits the identification of the index or indices and the degree of tracking sought.

The section *investment policy of the UCITS* comprises, if this information is relevant, indications similar to the following:

- the main categories of eligible financial assets,
- information on whether the investment policy of the UCITS concentrates on certain markets (sectorial, geographical or others) or on certain types of assets (shares, bonds or others).

The simplified prospectus of UCITS which make use of financial derivative instruments must indicate if this type of instruments is used for investment policy

purposes or for hedging purposes only. The simplified prospectus of UCITS which reproduce an index must indicate the strategy which is pursued to achieve this objective.

The description of the *risk profile of the UCITS* is qualitative. In addition to the general risks incurred by all investors investing in a UCITS, it must describe the specific risks which the UCITS incurs by reason of the specific investment policy or strategies it pursues.

In all cases, the simplified prospectus must comprise the following provisions:

- the investments of the UCITS are subject to market fluctuations and there is a risk for the investor to eventually recover an amount lower than the one he invested,
- a reference to the full prospectus for a detailed description of the risks mentioned in the simplified prospectus.

If the UCITS has adopted the form of a UCITS with multiple compartments, such information must be provided for each compartment.

b) historical performance of the UCITS

The historical performance of the UCITS must be represented on a chart showing the performance for the three last accounting periods. If the UCITS exists for less than three years, the chart must present the situation for the full past years. The performance must be calculated on the basis of the NAV, taking into account the reinvestment of dividends.

If the UCITS is managed by reference to a reference index, a "benchmark", or if the fee structure comprises a performance fee depending of a reference index, the historic performance of the UCITS must be compared to the historic performance of the reference index by reference to which the UCITS is managed or on the basis of which the performance fee is calculated.

If the UCITS has adopted the form of a UCITS with multiple compartments, such information must be provided for each compartment.

c) the other possible expenses and fees

The UCITS must indicate the management fee and, where applicable, the performance fee as well as other possible expenses and fees, distinguishing between those to be paid by the investor and those to be paid out of the assets of the UCITS.

In addition, UCITS may calculate a total expense ratio. The total expense ratio, hereafter *Total Expense Ratio (TER)*, is the ratio of the gross amount of the expenses of the UCITS to its average net assets.

If a UCITS calculates a TER, the rules set forth hereafter must be complied with.

The average net assets must be calculated on the basis of the net assets of the UCITS each time when the NAV is calculated.

The TER must be calculated at least once a year on an ex-post basis, in principle by reference to the fiscal year of the UCITS.

The TER includes all the expenses levied on the assets of the UCITS such as management charges, performance fees, administration charges, custodian charges, distribution charges, professional charges of the auditor, professional charges of the legal advisers, registration charges and duties. The TER does not include subscription and redemption fees directly paid by the investor.

If a UCITS invests more than 20% of its assets in other investment funds which publish a TER in accordance with this circular, a synthetic TER corresponding to such investment must be indicated.

If the target funds do not publish a TER in accordance with this circular, the impossibility to calculate a synthetic TER for such portion of investments must be mentioned.

The simplified prospectus must indicate if transaction costs are or are not included in the TER.

If the UCITS has adopted the form of a UCITS with multiple compartments or issues multiple classes of shares/units, the TER is calculated per compartment and, if applicable, per class of shares/units.

The simplified prospectus may indicate the turnover rate of the portfolio on an annual basis, hereafter *portfolio turnover rate*. The *portfolio turnover rate* of a UCITS or, if applicable, of a compartment must be calculated as follows:

$$\text{Turnover} = [(Total\ 1 - Total\ 2)/M]*100$$

with:

$$Total\ 1 = \text{Total of securities transactions during the relevant period} = X + Y$$

where X = purchases of securities and Y = sale of securities

Total 2 = total of transactions in units/shares of the UCITS during the relevant period = S + T

where S = subscriptions of units/shares of the UCITS and T = redemptions of units/shares of the UCITS

M = average monthly assets of the UCITS

The information relating to the TER, the *portfolio turnover rate* and the historic performances can be reflected in the simplified prospectus or on a sheet annexed to the simplified prospectus.

III. Visa

All UCITS subject to part I of the Law of 20 December 2002 must publish a simplified prospectus and transmit it to the CSSF in accordance with articles 109 and 114 of such law.

UCITS which publish a simplified prospectus must previously transmit it to the CSSF (together, where applicable, with the sheet annexed to the simplified prospectus) as well as any amendments thereto (and/or to the sheet annexed to the simplified prospectus). Once the simplified prospectuses have obtained the "*nihil obstat*" of the CSSF, they are provided with the CSSF's visa stamp and are remitted to the person who has introduced the file.

To that effect, the CSSF must receive five samples of each simplified prospectus in its final form and presentation. The visa stamp may in no circumstances be used for commercial purposes.

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Yours sincerely,

COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

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