

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

Luxembourg, 19 July 2005

To all persons and undertakings under the supervision of the CSSF, as well as to all persons intending to make an offer of securities to the public in Luxembourg or requesting the admission of securities to trading on a regulated market in Luxembourg, notably within the scope of Part II and chapter 1 of Part III of the law on prospectuses for securities

**CIRCULAR CSSF 05/196**

**Re: Technical specifications regarding communications to the CSSF of documents for the approval or for filing and of notices for offers of securities to the public and admission of securities to trading on a regulated market, in relation to the law on prospectuses for securities**

Ladies and Gentlemen,

The purpose of this circular is to specify the technical procedures regarding the communications to the CSSF of:

- documents for approval by the CSSF or filing with the CSSF relating to offers of securities to the public and admissions of securities to trading on a regulated market, which are subject to Community harmonisation under Directive 2003/71/EC, in accordance with articles 7, 8, 10, 11-16 of Chapter 1 of Part II of the law on prospectuses for securities (hereinafter the “**Prospectus Law**”);
- documents for approval or for the filing relating to offers of securities to the public and other comparable instruments not covered by Part II, in accordance with articles 31, 32, 34-39 of Chapter I of Part III of the Prospectus Law;

- requests for certificates of approval in accordance with article 19 of Chapter 2 of Part II of the Prospectus Law; and
- notices regarding public offers of securities and other comparable instruments referred to in Parts II and III of the Prospectus Law and notices regarding admissions of securities to trading on a regulated market, referred to in Part II of the Prospectus Law, in accordance with articles 5 and 6 of Part II and article 30 of Chapter 1 of Part III of the Prospectus Law.

Not included within the scope of the technical procedures set out in points 2, 3, 4, 5, 7 and 8 are prospectuses drawn up for offers to the public and admissions to trading on a regulated market of units/shares issued by Luxembourg closed-end undertakings for collective investment (UCIs) or by investment companies in risk capital (SICARs). Communications to the CSSF in this context shall be made by using the existing means of communication regarding applications for authorisation of UCIs or SICARs and will be specified in separate circulars. Prospectuses drawn up for offers to the public and admissions to trading on a regulated market of non equity securities (e.g. bonds) issued by these entities are fully submitted to the technical procedures set out in this circular.

This circular does not apply to communications to the CSSF regarding undertakings for collective investment other than the closed-end type.

## **1. Powers**

The Prospectus Law designates the CSSF as the competent authority to ensure the enforcement of the provisions of Part II, which deals with the drawing-up, approval and distribution of the prospectus when securities are offered to the public and/or admitted to trading on a regulated market, which are subject to Community harmonisation under Directive 2003/71/EC (article 22) and of the provisions of Part III, Chapter 1 which deals with the drawing-up, approval and distribution of prospectuses to be published when securities and other comparable instruments not covered by Part II (article 43) are offered to the public.

In accordance with articles 7 and 13 of Part II, Chapter 1 of the Prospectus Law, the CSSF is the competent authority for the approval of prospectuses and any supplements thereto, drawn up for offers of securities to the public and/or admission of securities to trading on a regulated market, which are subject to Community harmonisation under Directive 2003/71/EC, when Luxembourg is the home Member State. The filings of documents and notices in accordance with Part II shall also be made with the CSSF.

Similarly, in accordance with articles 31 and 39 of Part III, Chapter 1 of the Prospectus Law, the CSSF is the competent authority for the approval of simplified prospectuses and any supplements thereto, drawn up for offers to the public of securities and other comparable instruments not covered by Part II. The filings of documents and notices in accordance with Part III shall also be made with the CSSF.

The Luxembourg Stock Exchange (*Bourse de Luxembourg*, which is currently the only market operator authorised to operate one or several securities markets situated or operating within the territory of Luxembourg) shall be the competent authority for the approval of prospectuses subject to the provisions of Chapter 2 of Part III (admissions of securities not covered by Part II to trading on a regulated market operated by the Luxembourg Stock Exchange) and of Part IV (admissions of securities to trading on a Luxembourg market not included in the list of regulated markets published by the European Commission).

While the Prospectus Law introduces a new definition of the powers as regards the prospectus approval as defined above, the powers regarding the decisions with respect to the admission of securities to trading on a market and/or official listing remain unchanged. Indeed, the decisions with respect to the admission of securities to a market and/or official listing continue to fall within the remit of the relevant market operator and are taken in accordance with the provisions laid down in the rules governing the functioning of this operator (currently in Luxembourg: the Rules and Regulations of the Luxembourg Stock Exchange), it being understood that compliance of the underlying documents with the Prospectus Law is one of the requirements to be fulfilled.

## **2. Submission of documents to be approved**

As regards the scrutiny of applications for prospectus approval submitted to the CSSF in accordance with articles 7 and 31 of the Prospectus Law (hereinafter, the “**Official Submission**”), the CSSF entrusted the Luxembourg Stock Exchange with the receipt of the documents.

The Official Submission with the CSSF can be validly made by an issuer, an offeror or by a person asking for the admission on a regulated market or a person acting on behalf of one of these persons (hereinafter, the “**Déposant(s)**”) through the following means:

- via the e-file communication platform at <http://www.e-file.lu> for *Déposants* who have an e-file connection;
- if the *Déposant* does not have the necessary e-file connection as yet, via e-mail to [prospectus@e-file.lu](mailto:prospectus@e-file.lu).

If a *Déposant* uses other means of communication, such as filing of paper copies, the latter must enclose an electronic support (CD, DVD, PC floppy disk). In that case, the files must be simultaneously submitted to the CSSF (110, route d’Arlon, L-2991 Luxembourg) and to the Luxembourg Stock Exchange (B.P. 165, L-2011 Luxembourg). The files can be sent in PDF or DOC (MS-Word) format.

The documents officially submitted shall enclose the following information:

- a list stating the exact designation of all the documents comprised in the submission;
- the object of the submission (indicating the Part and, where applicable, the Chapter of the Prospectus Law under which the approval is requested and the Member State(s) in which an offer to the public is planned, as well as the regulated market(s) on which the admission to trading is requested);
- the name, postal address, e-mail and telephone number of the *Déposant* and the contact person for the file;
- the name, postal address, e-mail and telephone number of the issuer on behalf of whom the documents were filed;
- the name, function, relation with the issuer, postal address, e-mail and telephone number of the person commissioned to receive, on behalf of the issuer, all the notifications;
- the name, postal address, e-mail and telephone number of the person commissioned by the issuer to receive the invoice and pay the fee (*taxe*) (see point 6 below);
- the name, postal address, e-mail and telephone number of the person commissioned by the issuer to confirm that the version submitted for the final approval and publication is the final version of the prospectus; and
- the timetable of the transaction and the requested date of approval.

Any reference made hereabove to the issuer is to be understood, where applicable, as reference to the offeror or to the person asking for the admission of securities to trading on a regulated market.

The Official Submission is confirmed by electronic acknowledgement of receipt, indicating the internal number assigned to the file, to the address indicated by the *Déposant*.

Every supplement submitted subsequent to the Official Submission must enclose the following information:

- the exact designation of all the documents comprised in the additional submission;
- the number assigned to the file in the acknowledgement of receipt; and
- an update of the information provided at the initial submission, where applicable.

The abovementioned procedure for the Official Submission does not exclude the possibility to introduce, via the abovementioned technical means, a draft prospectus to get a preliminary view, e.g. for complex transactions.

The provisions of the Prospectus Law do not provide for the prior communication and formal approval of advertisements. This does not exclude the possibility to submit, via

the abovementioned technical means, a draft advertisement in order to obtain an opinion as regards its compliance with the principles laid down in articles 17 and 40 of the Prospectus Law.

### **3. Enforcement of the time limits for scrutiny of an application**

The time limit as laid down in articles 7 and 31 paragraphs 2 and 3 respectively of the Prospectus Law starts to run as from the working day following that of the Official Submission of a dossier.

If, at the time of the receipt and/or processing of the file, the file is not complete or additional information is needed, the information that the file is incomplete in accordance with articles 7, paragraph 5 and 31, paragraph 5 is communicated to the *Déposant* through the Luxembourg Stock Exchange. In that case, the time limits only run as from the working day that follows the day on which the requested information has been provided by the *Déposant* in accordance with the above provisions of the Prospectus Law.

Given the application of principles of administrative law, the decision regarding the approval of the prospectus can still be validly notified after the expiry of the abovementioned time limit. This notably enables the issuer to request the CSSF to approve the prospectus on a date, which, due to the timetable of the transaction, falls beyond the prescribed time limits provided in the Prospectus Law as regards the notification of the decision of approval.

The same principles apply to the applications for approval of supplements to the prospectus in accordance with articles 13, paragraph 1 and 39, paragraph 1 within the framework of which the maximum time limit for approval is 7 days.

### **4. Handling of applications for approval and approval**

The CSSF entrusted the Luxembourg Stock Exchange with the preliminary analysis of the documents filed for approval in accordance with point 2. above with respect to their compliance with the Prospectus Law and Commission Regulation (EC) No 809/2004 of 29 April 2004. The Luxembourg Stock Exchange shall thus be in contact with the *Déposants* with a view to completing or amending the filed documents so that they comply with the Prospectus Law and Commission Regulation (EC) No 809/2004 of 29 April 2004. After having reviewed and commented the submitted prospectuses, the Luxembourg Stock Exchange shall submit its opinion to the CSSF in the form of a report. Based on this opinion, submitted together with the documents concerned, the CSSF undertakes a control before it decides on the approval of the prospectus.

The CSSF communicates the approval by way of e-mail to the address indicated by the *Déposant* to this end at the Official Submission and sends a confirmation in writing to the postal address of the issuer, offeror or person asking for the admission.

## **5. Submissions of requests for certificates of approval**

In accordance with article 19 of Chapter 2 of Part II of the Prospectus Law, the requests for notification by the CSSF to one or several competent authorities of the host Member States by means of a certificate of approval shall be submitted according to the same procedures as those referred to in point 2. above, either together with the draft prospectus, or separately. The applications shall include the following information and documents:

- indication of the host Member State for which the notification shall be prepared;
- indication of the date on which the notification is requested;
- where applicable, the translation of the summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus.

The same procedure shall apply for any supplement to the prospectus, and, where applicable, the summary.

## **6. Fees (taxes)**

Every application for approval is subject to the payment of a fee (*taxe*) whose terms will be laid down by Grand-Ducal regulation. The CSSF will directly levy the fees (*taxes*) concerned following the Official Submission of the application for approval.

## **7. Filing of documents that are not subject to approval**

The filing of documents that are not subject to approval shall be made according to the same procedures as those referred to in point 2. above. The documents concerned are the following:

- the final terms (article 8, paragraph 4 and article 32, paragraph 4);
- the final offer price and the amount of securities offered (article 10, paragraph 1 and article 34, paragraph 1);
- the registration document, insofar as its approval is not sought, which shall be expressly mentioned (articles 11 and 35); and
- the annual document as defined in article 14.

## **8. Notices for offers to the public and admission to trading on a regulated market**

The notices for offers to the public of securities and other comparable instruments referred to in Parts II and III of the Prospectus Law and the notices for admissions of securities to trading on a regulated market referred to in Part II of the Prospectus Law in accordance with articles 5, 6 and 30 of Parts II and III of the Prospectus Law shall be made according to the same procedures as those defined in point 2. above.

Every notice shall include the following information and documents:

- the object of the notice (nature and timetable of the transaction planned in Luxembourg);
- the name and address of the person issuing the notice, of the issuer for whom the notice is made, as well as the name, address and telephone number of the contact person(s);
- where applicable, indication of the home Member State from which the CSSF should receive the notification; and
- the documents which have only been filed with the home Member State authority without having been approved and which are not included in the latter's notification (e.g. the final terms relating to a programme).

The Official Submission made in relation to an application for the approval of a prospectus (or the filing of final terms, respectively) is simultaneously worthy of a notice, i.e. the persons who made an Official Submission in accordance with point 2. above (or a filing of final terms, respectively), do not have to also submit a notice in accordance with this point 8.

## **9. Publication**

By virtue of article 16, paragraph 4 and article 38, paragraph 4 of the Prospectus Law, the CSSF delegated the publication of prospectuses to the Luxembourg Stock Exchange, which will publish them on its webpage at <http://www.bourse.lu>. The publication requirement imposed on issuers in Luxembourg in accordance with articles 16 and 38 paragraphs 1-3 of the Prospectus Law is thereby fulfilled. However, this does not prevent the issuer to use other means of publication.

Yours faithfully

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Simone DELCOURT  
Director

Arthur PHILIPPE  
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