

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 21 December 2006

To all investment companies in risk
capital (SICARs)

CIRCULAR CSSF 06/272

Re: Technical specifications regarding the communication to the CSSF, under the law on prospectuses for securities, of documents for the approval or for filing and of notices for offers to the public of securities issued by SICARs and admissions of securities issued by SICARs to trading on a regulated market

Ladies and Gentlemen,

This circular addresses Luxembourg investment companies in risk capital within the meaning of the law of 15 June 2004 relating to the Investment company in risk capital (SICAR), whose securities are being offered to the public or admitted to trading on a regulated market within the meaning of the law of 10 July 2005 on prospectuses for securities (hereinafter "Prospectus Law"). Please refer to circular CSSF 05/226 of 16 December 2005 for a general presentation of the Prospectus Law. Definitions are

available in part I.1. entitled “The securities concerned” of circular CSSF 05/225 of 16 December 2005.

The purpose of this circular is to specify the technical procedure for communications to the CSSF of:

- documents for approval by the CSSF or filing with the CSSF relating to offers of securities issued by SICARs to the public and admissions of securities issued by SICARs 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 Prospectus Law;
- requests for certificates of approval in accordance with article 19 of Chapter 2 of Part II of the Prospectus Law; and
- notices for offers to the public of securities issued by SICARs governed by Part II of the Prospectus Law and notices for admissions of securities issued by SICARs 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 of the Prospectus Law.

1. Powers

The Prospectus Law designated the CSSF as the authority competent to ensure implementation of the provisions of Part II on the drawing-up, approval and distribution of the prospectus to be published when securities issued by SICARs 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).

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 issued by SICARs to the public and/or admission of securities issued by SICARs 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 filing of documents and notices in accordance with Part II shall also be made with the CSSF.

While the Prospectus Law introduces in Luxembourg a new definition of the powers as regards the prospectus approval, the powers regarding the decisions with respect to the admission of securities issued by SICARs to trading on a market and/or official listing remain unchanged. Indeed, the decisions with respect to the admission of securities issued by SICARs 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. Applications for approval

Before making an official submission under article 7 of the Prospectus Law (hereinafter "Official Submission"), the SICAR must be approved by the CSSF. To this end, the SICAR shall submit an application file to the CSSF. As soon as the CSSF has given its verbal approval, the SICAR may make an Official Submission.

3. Submission of documents to be approved

The CSSF receives the documents submitted in the context of scrutiny of applications for prospectus approval.

The Official Submission with the CSSF can be validly made by an issuer, an offeror or by a person asking for the admission to trading on a regulated market or a person acting on behalf of one of these persons (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; and
- if the *Déposant* does not have the necessary e-file connection as yet, *via* e-mail to prospectus.approval@cssf.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). The files shall be submitted to the CSSF by post (110, route d'Arlon, L-2991 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 have been 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 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 issued by SICARs to trading on a regulated market.

The Official Submission is confirmed by electronic acknowledgement of receipt:

- through the e-file process, if the submission has been made *via* e-file,
- to the address stated by the *Déposant* if the filing has been made through prospectus.approval@cssf.lu.

4. Enforcement of the time limits for scrutiny of an application for offers of securities issued by SICARS to the public and admission of securities issued by SICARs to trading on a regulated market

The time limit laid down in article 7(2) of the Prospectus Law runs from the working day following that of the Official Submission of a file.

If, at the time of the receipt and/or processing of the file, the file is not complete or additional information is needed, CSSF informs the *Déposant*, either *via* e-file or e-mail, that the file is incomplete in accordance with article 7(5). In that case, the time limits only run 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 above-mentioned 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 article 13(1) for which the maximum time limit for approval is 7 days.

5. Handling of applications for approval and approval

The CSSF communicates the approval either *via* e-file or e-mail to the address stated to this end by the *Déposant* at the Official Submission, and confirms the approval in writing to the postal address of the issuer, offeror or person asking for the admission.

6. 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 certificates of approval for the purpose of notification by the CSSF to one or several competent authorities of the host Member States shall be submitted according to the same procedures as those referred to in point 3 above. This request shall be sent 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.

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 3 above. The documents concerned are the following:

- the registration document, insofar as its approval is not sought, which shall be expressly mentioned (article 11); 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 issued by SICARs and notices for admissions of securities issued by SICARs 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 of the Prospectus Law shall be made in accordance with the same procedures as those referred to in point 3 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).

The Official Submission made in relation to an application for the approval of a prospectus (or the filing of final terms, respectively) is simultaneously considered as a notice, i.e. the persons who made an Official Submission in accordance with point 3 above, do not have to also submit a notice in accordance with this point 8.

Yours faithfully,

Commission de Surveillance du Secteur Financier

Simone DELCOURT
Director

Jean-Nicolas SCHAUS
Director General