

**COMMISSION de SURVEILLANCE  
du SECTEUR FINANCIER**

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

Luxembourg, 5 September 2008

To all specialised investment funds and their  
depositories

**CIRCULAR CSSF 08/372**

**Re: Guidelines for depositories of specialised investment funds adopting alternative investment strategies, where those funds use the services of a prime broker**

Ladies and Gentlemen,

This Circular is specifically directed at all specialised investment funds (hereinafter “SIF”) which, while making use of derivatives or adopting alternative investment strategies, use the services of a prime broker in accordance with market practice.

By way of example, the role of the prime broker generally consists in the provision of the following services to SIFs:

- custody of the SIF’s assets;
- execution of transactions and netting operations on behalf of the SIF;
- actions relating to margin deposits;
- setting up credit facilities to finance overdrafts;
- securities lending and borrowing or share repurchase transactions.

The selection of the prime broker, as well as its official appointment by way of contract formalising the appointment and defining the duties and responsibilities of the prime broker, is, depending on the legal form of the SIF, the decision and the responsibility of the management board in charge in case the SIF is a legal entity or of the management company in case the SIF is organised as common fund.

In accordance with the law of 13 February 2007 relating to specialised investment funds (hereinafter “law of 13 February 2007”), the custody of assets of all SIFs must be entrusted to a depositary. This is a general obligation insofar as it applies equally to all SIFs, irrespective of legal form or investment policy.

The notion of custody in the context of the depositary’s duties is to be understood in the sense of “supervision”. For the purposes of this Circular, the duty of “supervision” is fulfilled if the provisions under points 1 and 2 below are respected.

Because of the prime broker’s role in the custody of the SIF’s assets and because of the necessary interaction between the prime broker and the depositary in the context of provision of services by the prime broker, with a view to safeguarding the SIF’s assets, the depositary has to approve the SIF’s choice of prime broker as described hereafter. As a matter of fact, the depositary of a SIF has to arrange its relationship with both the SIF and the prime broker in such a way that it is in a position to fulfil its task of supervision of the SIF’s assets.

The purpose of this Circular is to set out the guidelines which permit the depositary of a SIF resorting to the services of a prime broker to perform its supervisory tasks in compliance with the provisions of the law of 13 February 2007.

## **1. Approval of the choice of the prime broker by the depositary**

The depositary has to approve the SIF’s choice of prime broker given the fact that the depositary has to arrange its relationship with the SIF and the prime broker so as to be able to fulfil its duty of supervision of the assets.

The approval by the depositary of the SIF’s choice of prime broker is limited to ensuring that the prime broker fulfils the following criteria:

- The prime broker is a financial institution regulated by a supervisory authority in a state in which the supervisory regime is recognised as being equivalent to the regime provided for by Community law.
- The prime broker is a financial institution which is recognised and specialised in this type of transactions.

## **2. Organisation of the relationship between the depositary and the prime broker**

The depositary shall ensure that it arranges its relationship with the prime broker in such a manner that the depositary is in a position to know the composition of the SIF's assets.

In order to enable the depositary to fulfil its supervisory tasks, as laid down in this Circular in a satisfactory manner, the depositary needs the reassurance that it has a right to obtain information on the composition of the SIF's assets which have been entrusted to the prime broker. Such right to obtain information can arise from appropriate instructions given by the SIF to the prime broker in the prime brokerage contract entered into between the SIF and the prime broker or from a direct contractual relationship between the depositary and the prime broker.

The depositary shall thus be able to obtain information from the prime broker at any given moment on the composition and the value of the SIF's assets which have been entrusted to the prime broker.

The depositary shall also have a right of intervention in relation to the SIF's assets which have been entrusted to the prime broker if the depositary deems to be no longer able to fulfil its supervisory tasks. Such a right of intervention can arise from appropriate instructions given by the SIF to the prime broker in the prime brokerage contract entered into between the SIF and the prime broker or from a direct contractual relationship between the depositary and the prime broker.

The depositary does not need to have information about the correspondents with which the prime broker holds the SIF's assets.

## **3. Additional tasks of the depositary**

The law of 13 February 2007 required the depositary to carry out all transactions regarding the day-to-day administration of the assets of a common fund. This means that the depositary has to specifically deal with the receipt of dividends, interests and securities which have come to maturity, the exercise of option rights and, in general, any other transaction relating to the day-to-day administration of securities and liquid assets belonging to the fund. Insofar as the assets have been entrusted to a prime broker, the latter may be contractually invested with the physical execution of such day-to-day administrative transactions.

#### **4. Investor information**

The offering document of a SIF resorting to the services of a prime broker, must include an adequate description of the involvement of the prime broker and of any potential related risks, including the counterparty risk.

Yours sincerely,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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