

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 8 July 2013

To all Luxembourg electronic
money institutions

CIRCULAR CSSF 13/569

**Re: Practical rules concerning the mission of the *réviseurs d'entreprises agréés*
(approved statutory auditors) of electronic money institutions**

Ladies and Gentlemen,

The purpose of this circular is to specify the scope of the mandate for the audit of the annual accounting documents and to set the rules relating to the content of the long form report that electronic money institutions are required to communicate to the Commission de Surveillance du Secteur Financier (the "CSSF") pursuant to Article 37 of the law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems ("the Law").

The law of 20 May 2011 transposes into national law Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC. The purpose of Directive 2009/110/EC is to create a viable and attractive regime for electronic money and to bring the prudential supervisory regime for electronic money institutions into line with that applicable to payment institutions laid down in Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market. Directive 2009/110/EC creates a new financial institution status which is different from that of credit

institutions, namely the status of "electronic money institution", and imposes conditions governing authorisation, business pursuit and supervision on these electronic money institutions.

The law of 20 May 2011 amends the Law, which transposes into national law the provisions of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market.

Pursuant to Article 37(3) of the Law, this circular generally defines the role and engagement of the *réviseurs d'entreprises agréés* (approved statutory auditors) in the context of the statutory audit of annual accounts, and more specifically the aspects that must be analysed in the long form report of the *réviseur d'entreprises agréé*. The long form report is a key supervisory instrument for the CSSF's supervisory mission.

The provisions of this circular shall apply to the electronic money institutions under Luxembourg law.

The provisions of this circular shall not apply to the Luxembourg branches of electronic money institutions of EU origin, i.e. branches of electronic money institutions whose head office is in an EU Member State. Electronic money institutions whose head office is in another country which is party to the European Economic Area Agreement shall be considered as EU electronic money institutions, within the limits set forth by this Agreement and related Acts¹.

In accordance with Circular CSSF 11/524, Luxembourg branches of EU electronic money institutions shall have audited certain specific areas for which the CSSF maintains a supervisory responsibility as host authority on an annual basis by a *réviseur d'entreprises agréé*:

- compliance with the legislation and regulations concerning the fight against money laundering and terrorist financing applicable to electronic money institutions;
- compliance with the provisions to which Article 58(1) and (2) of the Law refers.
- compliance with the provisions to which Articles 48-2 (Issuance and redeemability of electronic money) and 48-3 (Prohibition of interest) of the Law refer.

¹ Currently Iceland, Liechtenstein and Norway.

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I. Mandate

Notwithstanding any exemption provided for in any non-specific law, every electronic money institution shall specify in writing to its *réviseur d'entreprises agréé* the terms of engagement containing at least the following provisions:

1. Annual accounts shall be audited according to the professional standards covering the tasks referred to in Article 1(29)(a) of the law of 18 December 2009 concerning the audit profession as stated in Chapter I of Regulation CSSF N°11-01 of 8 July 2011 (hereinafter "CSSF Regulation").

For statutory audits, the CSSF Regulation notably provides for the application of the International Standards on Auditing (ISAs) published by IFAC (International Federation of Accountants), adapted to or supplemented by, as needed, the national legislation or practice.

2. The audits shall cover all business areas of the electronic money institution falling within the CSSF's scope of supervision in accordance with Article 31(2a) of the Law.

The *réviseur d'entreprises agréé* shall state for every audited business area the verification tasks performed. The findings of the *réviseur d'entreprises agréé* shall be set out in a clear and positive manner.

The long form report shall include a detailed description of the identified weaknesses and irregularities.

3. The mandate given to the *réviseur d'entreprises agréé* shall not exclude from the scope of the audit a particular type of activity, category of transaction or specific transaction falling within the supervisory scope of the CSSF. Furthermore, the audit shall cover all the risks, as well as all the financial, organisational and internal control-related aspects of the electronic money institution. The audit shall allow providing any information required in the long form report defined in this circular (cf. Chapter III. below).
4. The mandate must expressly contain the following tasks:

- verifying compliance with Article 28 (Professional obligations concerning the fight against money laundering and terrorist financing) and Article 29 (Cooperation requirements with the authorities) of the Law and the entire legislation on the fight against money laundering and terrorist financing applicable to electronic money institutions.
- verifying compliance with the provisions referred to in Article 24-6(1)(b) of the Law where the electronic money institution grants credits related to payment services referred to in points 4, 5 or 7 of the Annexe of the Law and with the provisions of the last subparagraph of Article 24-6(1) of the Law on this subject.
- verifying compliance with the provisions referred to in Article 24-10(1) and (2) of the Law concerning safeguarding requirements for funds. If the electronic money institution decides to invest funds received in exchange for electronic money issued in secure, low-risk assets in accordance with Article 24-10(1)(a) of the Law, verifying if these assets comply with the provisions of Article 24-10(4) of the Law.
- verifying compliance with the provisions referred to in Article 24-10(5) of the Law if the electronic money institution provides payment services in accordance with Article 24-6(1)(a) of the Law. Secure, liquid low-risk assets as referred to in Article 14(1)(a) of the Law are defined in Article 24-10(4) of the Law. Where applicable, verifying that these assets comply with the provisions of Article 24-10(4) of the Law.
- verifying compliance with the provisions referred to in Article 24-12(1) of the Law on the calculation of own funds.
- verifying compliance with the provisions referred to in Articles 48-2 (Issuance and redeemability of electronic money) and 48-3 (Prohibition of interest) of the Law.
- verifying compliance with the provisions referred to in Articles 58(1) and (2) of the Law.
- verifying compliance with the provisions referred to in the second subparagraph of Article 24-7(5) of the Law.
- verifying compliance with the circulars applying to electronic money institutions as regards central administration and infrastructure as listed in Circular CSSF 11/520.

5. The mandate shall encompass all the electronic money institution's branches abroad.

Concerning the agents located abroad through which the electronic money institution intends to provide payment services or distribute and redeem electronic money, the long form report shall describe in a separate chapter the control and support framework of these agents by the electronic money institution. Specific attention shall be paid to the professional obligations relating to the fight against money laundering and terrorist financing. The *réviseur d'entreprises agréé* shall assess the control and support framework of these agents by the electronic money institution.

As regards the foreign natural or legal persons through which the electronic money institution intends to distribute or redeem electronic money, the long form report shall describe in a separate chapter the control and support framework of these natural and legal persons by the electronic money institution. The *réviseur d'entreprises agréé* shall assess the control and support framework of these natural and legal persons by the electronic money institution.

As far as the control of compliance with the Luxembourg standards concerning money laundering and terrorist financing and conduct of business rules is concerned, the mandate shall also cover all the subsidiaries of the electronic money institution established abroad.

Electronic money institutions are requested to provide the CSSF with a copy of the mandate given to their *réviseur d'entreprises agréé* for the audit of annual accounts, and, where applicable, of consolidated accounts. Electronic money institutions shall also notify the CSSF of any change to this mandate or of any renewal thereof under other terms than those initially communicated to the CSSF.

6. The tasks performed by the *réviseur d'entreprises agréé* within the framework of the mandate defined above shall be documented, on the one hand, by a report on annual accounts (cf. Chapter II. below) and, on the other hand, by an annual long form audit report (cf. Chapter III. below).
7. Where the electronic money institution is subject to supervision on a consolidated basis by the CSSF, a consolidated annual long form audit report, based on the consolidated financial situation, shall also be established.

8. Electronic money institutions shall immediately inform the CSSF if the *réviseur d'entreprises agréé* terminates his mandate before expiry of the term or if he decides not to renew his mandate.

Electronic money institutions shall also provide the CSSF with a reasoned notification of their intention to terminate the mandate of their *réviseur d'entreprises agréé* or not to renew it. The CSSF will analyse, for each request to change the *réviseur d'entreprises agréé*, the reasons for the envisaged change and assess whether the electronic money institution has, during the selection procedure of the new *réviseur d'entreprises agréé*, carefully assessed the adequacy of the competence and resources of the latter based on the type and volume of the electronic money institution's activities and the nature and complexity of its internal systems. At the same time, the electronic money institutions shall transmit a copy of the mandate given to the new *réviseur d'entreprises agréé* to the CSSF.

II. Report on annual accounts/consolidated accounts

The report of the *réviseur d'entreprises agréé* (auditor's report or short form report, *Bestätigungsvermerk*) is subject to legal publication together with the (consolidated) annual accounts and the (consolidated) management report it covers, in accordance with Article 79(1) of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings ("RCC Law") (Article 341 of the law of 10 August 1915 on commercial companies, as amended ("LCC Law")).

The auditor's report shall include the elements set out in Article 69a of the RCC Law and in Article 340(3) of the LCC Law. The *réviseur d'entreprises agréé* shall issue his report in accordance with the International Standards on Auditing ISA 700 to 799 (Audit Conclusions and Reporting) as adopted by the CSSF Regulation. Where appropriate, it shall take into account the technical notes issued by the Institut des Réviseurs d'Entreprises.

The report on (consolidated) annual accounts must include the elements it refers to, i.e. the (consolidated) annual accounts and the (consolidated) management report. Pursuant to Article 26(1) of the RCC Law (Article 319 of the LCC Law), the (consolidated) annual accounts shall contain the (consolidated) balance sheet, the (consolidated) profit and loss account as well as the notes to accounts; these documents shall form a whole.

The (consolidated) management report defined in Article 68(1) of the RCC Law (Article 339 of the LCC Law).

The audit of the *réviseur d'entreprises agréé* shall cover the annual accounts and, where applicable, the consolidated accounts.

Where the electronic money institution performs activities other than issuing electronic money and the activities referred to in Article 24-6(1)(a) to (d) of the Law, it shall inform the CSSF thereof. In the case in point, these are so-called "hybrid" electronic money institutions that are commercial companies which may be granted the status of electronic money institution and issue electronic money and provide payment services while carrying out activities other than those falling within the scope of the CSSF's prudential supervision. From the moment a "hybrid" electronic money institution exists, the CSSF will determine the mandate within which the *réviseur d'entreprises agréé* shall issue a report on "separate financial information" concerning its activity of electronic money issuance or provision of payment services in accordance with the provisions of Article 24-13(3) of the Law.

Where a *réviseur d'entreprises agréé* notifies the electronic money institution that he will issue a qualified certificate or refuse to certify the accounts, the aforementioned electronic money institution must immediately inform the CSSF thereof.

III. Annual long form audit report

III. A. General principles

The purpose of the long form report (*compte rendu analytique, Prüfungsbericht*) is to describe and analyse the observations concerning financial and organisational aspects that the *réviseur d'entreprises agréé* made during the course of his audit.

The long form report that the electronic money institutions' *réviseur d'entreprises agréé* draws up is not intended for the public. It is issued for the exclusive use of the management and administrative bodies of the electronic money institution concerned as well as for the supervisory authority.

The long form report shall be concise, clear and critical, setting out the main observations made for every point listed in the schedule below, allowing assessing whether the electronic money institution has in place, for the issuance of electronic

money and, where applicable, the provision of payment services, a robust internal governance framework, which notably includes a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard mechanisms for its IT and processing systems. The observations included in the long form audit report shall also allow assessing the financial situation of the electronic money institution, as well as its evolution.

The management of the electronic money institution shall be responsible for drawing up the descriptive sections of the long form report and shall provide the *réviseur d'entreprises agréé* with all the information needed to draw up the long form report. The *réviseur d'entreprises agréé* shall assess the adequacy of the descriptive sections drawn up by the electronic money institution based on its work and professional judgement.

The *réviseur d'entreprises agréé* must report in detail the weaknesses and points needing improvement observed during the course of the audit. This may be reported within the scope of the long form report or through a management letter addressed to the management of the electronic money institution. The observations of the *réviseur d'entreprises agréé* must be accompanied by comments of the electronic money institution's management. In case a management letter is drawn up, it must be appended to the long form report except in exceptional circumstances where, based on a duly justified request, the CSSF grants a deadline to transmit the management letter after the long form report. The *réviseur d'entreprises agréé* must specifically mention if he does not issue a management letter.

Pursuant to Article 37(1) of the Law, electronic money institutions shall also spontaneously submit to the CSSF, on their own initiative, all other documents issued by the *réviseur d'entreprises agréé* within the scope of its annual audit.

The annual long form audit report must be submitted to the CSSF no later than **one month** following the ordinary general meeting of the electronic money institution. Upon duly justified request, the CSSF may grant a one-month extension of the deadline.

Electronic money institutions subject to the CSSF's supervision on a consolidated basis, must submit, no later than **three months** following their ordinary general

meeting, the consolidated long form audit report, as well as the long form reports of their subsidiaries included in the supervision on a consolidated basis. Upon duly justified request, the CSSF may grant a one-month extension of the deadline.

The long form reports shall be transmitted to the CSSF on paper as well as in electronic form.

III.B. Schedule of the long form report

The long form report shall be drawn up according to the schedule below. It may be adapted to the nature, volume and complexity of the activities, as well as to the structure of the audited electronic money institution. Where applicable, the *réviseur d'entreprises agréé* shall supplement the schedule with aspects he deems appropriate. Where a specific point of the schedule does not apply to the audited electronic money institution, the *réviseur d'entreprises agréé* must explicitly mention this under the item concerned.

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11. Compliance with the provisions to which Article 58(1) and (2) of the Law refer
12. Branches, agents and natural or legal persons through which the electronic money institution intends to distribute or redeem electronic money
13. Relations with affiliated undertakings
14. Follow-up on issues raised in previous reports
15. General conclusion

III.C. Comments relating to the long form report schema

1. Mandate

The *réviseur d'entreprises agréé* shall provide a summary description of his annual audit mandate. The *réviseur d'entreprises agréé* shall also mention all other services that he himself, his company or group have provided to the audited electronic money institution.

2. Significant events

This point indicates, where applicable, the significant events which took place during the year under review. These events are, for example: strategic decisions taken by the board of directors and the executive committee, the beginning or the end of important reorganisations, the launch or discontinuation of an activity, the conclusion of extraordinary transactions or negotiations with other institutions or groups as regards mergers/acquisitions or co-operation.

Where no significant events have taken place during the year under review, the *réviseur d'entreprises agréé* shall specifically mention this fact.

3. Organisation and administration

This point shall provide an overview of the operational and decision-making structure of the electronic money institution. It shall notably allow concluding precisely whether the provisions of the circulars applicable to electronic money institutions with respect to central administration and infrastructure as listed in Circular CSSF 11/520 are being complied with.

3.1 Description of the shareholding

This point shall describe the direct shareholders of the electronic money institution and of the group to which it belongs; this structure shall be presented in the form of an organisation chart.

3.2 Electronic money institution organisation chart

The organisation chart of the electronic money institution shall differentiate between the management and the different departments and committees, while

stating the corresponding number of staff, and represent the corresponding hierarchical and functional structures by indicating the general and particular delegations of power. The organisational structure should be submitted in the form of a chart including, if necessary, supporting comments.

3.3 Executive and management bodies

The list of the members of the executive bodies shall be indicated, highlighting those who are approved by the CSSF pursuant to Article 24-9(2) of the Law ("four-eyes" principle). This point shall include a description of the powers of the executive bodies with a precise indication of the limits of these powers.

The *réviseur d'entreprises agréé* shall state if:

- the members of the management (at least two) were assigned their powers directly by the board of directors, and
- if they have equal powers (which is a condition for a collegial management and which shall be correctly reflected in the organisation chart of the electronic money institution).

The long form report shall indicate if, besides the board of directors and the authorised management, other decision-making bodies exist: sub-committees of the board of directors (audit committee, credit committee, etc.), local internal committees, group-level committees in which the electronic money institution participates (credit committee, treasury committee, etc.). If so, the *réviseur d'entreprises agréé* shall state the composition and powers, as well as possible veto rights that the members of the approved management of the Luxembourg electronic money institution have over the decisions of these bodies.

The long form report shall also list the persons who are members of the approved management and who are appointed as the persons responsible for certain functions. The following circulars should apply in particular:

- IML 95/118 relating to customer complaint handling;
- IML 96/126 relating to the administrative and accounting organisation;
- IML 98/143 relating to internal control;
- CSSF 04/155 relating to the Compliance function;
- CSSF 13/556 concerning the entry into force of Regulation CSSF N° 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing.

It will also state all the changes as regards these persons which occurred during the financial year. Since these persons may entrust members of staff with the exercise of certain practical tasks related to these functions, the long form report shall describe this co-operation.

3.4 Organisation of the operating network

The description of the network's organisation shall cover the national and foreign subsidiaries, the branches, the agents abroad through which the electronic money institution intends to provide payment services or distribute and redeem electronic money, the natural or legal persons through which the electronic money institution intends to distribute or redeem electronic money and all the co-operation agreements with respect to the services of the electronic money institution by partners of services of other institutions.

If the electronic money institution holds branches and/or subsidiaries, the long form report shall also describe the integration of branches and subsidiaries in the organisational, functional and decision-making structure of the electronic money institution under this point. The *réviseur d'entreprises agréé* shall assess the integration of subsidiaries and branches in the organisational, functional and decision-making structure of the electronic money institution.

The long form report shall also describe the support and control framework of the agents through which the electronic money institution provides payment services or distributes and redeems electronic money and the natural or legal persons through which the electronic money institution distributes or redeems electronic money, by the electronic money institution. The *réviseur d'entreprises agréé* shall assess this support and control framework of these natural and legal persons by the electronic money institution.

A review of the branches' organisation and activities and an analysis of their risks will be provided in a separate chapter for every branch (cf. item 12 of the long form report).

In case the electronic money institution has subsidiaries subject to the consolidated supervision of the CSSF, a consolidated long form audit report shall be drawn up (cf. Chapter IV. "consolidated long form audit report" below).

Finally, the long form report shall also review any other type of co-operation agreement related to the organisation and administration, the internal control or the activities with affiliated or unaffiliated undertakings.

The *réviseur d'entreprises agréé* shall also state in this item any conflicts of the electronic money institutions in relation with the co-operation agreements.

3.5 Compliance with the provisions of Article 24-7 of the Law (central administration and infrastructure)

The *réviseur d'entreprises agréé* shall assess the compliance with the provisions of Article 24-7 of the Law concerning central administration and infrastructure. It should be noted that the concept of central administration and infrastructure is specified in Circular IML 95/120, which, according to Circular CSSF 11/520, applies to electronic money institutions.

3.6 Administrative and accounting organisation

The long form report shall provide a summary description of the administrative and accounting organisation. The *réviseur d'entreprises agréé* shall describe its adequacy with respect to the electronic money institution's business type, volume and complexity. It should be noted that the concept of administrative and accounting organisation is specified in Circular IML 96/126, which, according to Circular CSSF 11/520, applies to electronic money institutions.

The *réviseur d'entreprises agréé* shall notably state if the human and technical resources available to the electronic money institution are sufficient to ensure a fair conduct of its business. In this context, the *réviseur d'entreprises agréé* shall assess whether the electronic money institution complies with the principle of segregation of duties considering the size of the audited electronic money institution.

The *réviseur d'entreprises agréé* shall explicitly comment on the adequacy of the processing of dormant accounts and the existence and adequacy of the processing of internal accounts.

The *réviseur d'entreprises agréé* shall comment on the appropriateness of the procedures set up within the electronic money institution and on compliance with these procedures.

3.7 IT systems (functional diagram of flows and risk analysis) and payment system

The long form report shall describe the IT and processing systems. The *réviseur d'entreprises agréé* shall assess their reliability and the security of the processed data. The *réviseur d'entreprises agréé* shall also assess the appropriateness of the IT system with respect to the electronic money institution's business type, volume and complexity.

If the electronic money institution provides payments services, the long form report shall also describe the payment systems proposed by the electronic money institution. The *réviseur d'entreprises agréé* shall assess their reliability and the security.

The long form report shall describe the disaster recovery plan/business continuity plan that the electronic money institution has drawn up in case of a breakdown of its IT system or of the proposed payments system, where applicable. The *réviseur d'entreprises agréé* shall assess this disaster recovery plan/business continuity plan.

Moreover, the *réviseur d'entreprises agréé* shall conduct a risk analysis which shall cover at least the following points:

- Information security. The *réviseur d'entreprises agréé* shall, in particular, comment on the IT system set up by the electronic money institution to protect against the risk of intrusion and the risk of misappropriation of funds;
- Development and maintenance of systems;
- Operating procedures;
- Technical support of information systems.

3.8 Outsourcing of operational functions related to the issuance of electronic money and, where applicable the provision of payment services.

If the electronic money institution outsources key operational functions related to the issuance of electronic money or, where applicable, to the provision of payment services in accordance with Article 24-7(4) of the Law, the *réviseur d'entreprises agréé* shall state whether the conditions laid down in points (a) to (d) of this paragraph are being complied with.

4. Internal control

The long form report shall describe the organisation of the internal control system and of the internal audit function. The *réviseur d'entreprises agréé* shall assess its appropriateness with respect to the electronic money institution's business type, volume and complexity and the real and potential money laundering and terrorist financing risks to which it is exposed. It should be noted that the concept of internal control is specified in Circular IML 98/143 as amended by Circular CSSF 04/155, which, in accordance with Circular CSSF 11/520, applies to electronic money institutions.

Concerning more particularly the internal audit function, the *réviseur d'entreprises agréé* shall provide:

- an assessment on the appropriateness of and compliance with the internal audit plan;
- an assessment of the manner in which the internal audit function operates;
- an assessment of this function's quality;
- for electronic money institutions that have local branches or branches abroad or which provide payment services or distribute or redeem electronic money in Luxembourg or abroad through agents or which distribute or redeem electronic money through foreign natural or legal persons, an assessment of the integration of these establishments in the audit plan;
- an adequacy assessment concerning the follow-up on the recommendations issued by the internal audit.

The long form report shall state if a risk management function exists within the electronic money institution. If so, the long form report shall describe the competence and functioning of this function and the *réviseur d'entreprises agréé* shall assess the competences and functioning of this function.

5. Activities and analysis of inherent risks

The long form report shall describe the activity of electronic money issuance provided by the electronic money institution in accordance with Article 1(29) of the Law.

The long form report shall state whether, besides the issuance of electronic money, the electronic money institution exercises one or several activities listed in points (a) to (e)

of Article 24-6(1) of the Law. Where appropriate, the long form report shall describe precisely the type and volume of these activities.

The long form report shall expressly state if the electronic money institution has stopped providing a payment service or if it has commenced providing a payment service, or if the institution has started one of the activities set out in points (b) to (e) of Article 24-6(1) of the Law within the financial year under review.

The *réviseur d'entreprises agréé* shall state whether the electronic money institution has established an adequate management system for the risks it incurs. This part shall also include an analysis of the electronic money institution's exposure to risks it may incur. The indicative list of these risks shall be completed, where applicable, according to the activities and situation of the electronic money institution concerned:

- credit risk/counterparty risk (including the potential chargeback risk);
- risk of fraud;
- risk of fund misappropriation;
- market risk;
- foreign-exchange risk;
- operational risk;
- risk of computer hacking (risk of intrusion);
- risk of breakdown of the computer system, and, where applicable, of the payment system;
- profitability risk;
- legal risk and reputational risk;
- settlement risk;
- liquidity risk.

The *réviseur d'entreprises agréé* shall provide for every listed risk a brief analysis both quantitative and qualitative.

Insofar as the risks are quantifiable, the quantitative analysis shall indicate the scale of the risks and the related provisions and value adjustments.

The qualitative analysis shall provide an analysis of the internal risk control and notably:

- identification of risks stemming from the electronic money institution's activities;

- risk measurement systems;
- organisational framework (existence of an independent risk control unit);
- verifying compliance with the provisions referred to in Article 24-6(1)(b) of the Law where the electronic money institution grants credits linked to payment services referred to in points 4, 5 or 7 of the Annexe of the Law and the provisions of the last subparagraph of Article 24-6(1) of the Law on this subject;
- the provisioning policy and accounting treatment;
- follow-up by the management and board of directors (management information system).

The *réviseur d'entreprises agréé* shall verify compliance with the provisions to which Article 24-10(1) and (2) of the Law refers. If the electronic money institution provides payment services in accordance with Article 24-6(1)(a) of the Law which are not related to the electronic money activity, the *réviseur d'entreprises agréé* shall verify compliance with the provisions to which Article 24-10(5) refers.

6. Periodic reports to submit to the CSSF

The long form report shall describe the systems and infrastructure implemented in order to draw up periodic prudential reports for the CSSF in accordance with Circular CSSF 11/522 regarding the periodic reporting scheme for electronic money institutions, as well as the internal control measures aiming to guarantee that the data submitted to the CSSF are complete, accurate and drawn up according to the applicable rules. The *réviseur d'entreprises agréé* shall assess the systems and infrastructure implemented in order to draw up periodic prudential reports for the CSSF in accordance with Circular CSSF 11/522 regarding the periodic reporting scheme for electronic money institutions, as well as the internal control measures aiming to guarantee that the data submitted to the CSSF are complete, correct and drawn up according to the applicable rules.

The *réviseur d'entreprises agréé* shall carry out sampling tests, the methodology and the results of which shall be commented.

Where applicable, explicit information shall be provided on the integration of branch data into the reporting.

In this item, the *réviseur d'entreprises agréé* shall also review the processing of and the follow-up on all correspondence between the electronic payment institution and the CSSF. The *réviseur d'entreprises agréé* shall state if the electronic money institution keeps a centralised file in this respect and indicate the name and function of the person in charge of this file. In case there is no centralised file within the electronic money institution, the *réviseur d'entreprises agréé* shall review the manner in which the institution allows the full consulting of the correspondence between the electronic money institution and the CSSF.

7. Own funds

The long form report shall describe the means implemented by the electronic money institution to ensure compliance with the provisions of Circular CSSF 10/462 relating to the definition and calculation of own funds for payment institutions, which also applies to electronic money institutions providing, in accordance with Article 24-6(1)(a) of the Law, one or several payment services not related to the activity of issuing electronic money. The *réviseur d'entreprises agréé* shall assess the means implemented by the electronic money institution to ensure compliance with the provisions of the aforementioned circular.

The *réviseur d'entreprises agréé* shall confirm whether the electronic money institution's own funds are calculated in accordance with the provisions of Article 24-12(2) of the Law.

If the electronic money institution provides payment services in accordance with Article 24-6(1)(a) of the Law which are not related to the activity of issuing electronic money, the *réviseur d'entreprises agréé* shall specify the method chosen by the electronic money institution to calculate own funds requirements resulting from this activity of payment service provision.

The *réviseur d'entreprises agréé* shall state if the electronic money institution complies with the provisions to which Article 24-12(3) third subparagraph of the Law refers.

8. Analysis of annual accounts

The long form report shall analyse the annual accounts, and include specific comments on important items and significant developments of the financial situation.

The long form report shall also state items, of which the *réviseur d'entreprises agréé* becomes aware after the closing and which may influence the assessment of the economic and financial situation of the electronic money institution.

9. Professional obligations as regards prevention of money laundering and terrorist financing

The long form report shall describe the procedures set up by the electronic money institution concerning the prevention of money laundering and terrorist financing as required by the laws and regulations applying to electronic money institutions.

The long form report shall provide, in particular, the following elements:

- a description of the customer acceptance policy;
- employee training and information on the detection of money-laundering and terrorist financing operations;
- historical statistics concerning the detected suspicious transactions, the number of suspicious transaction reports filed by the electronic money institution to the State Prosecutor (Financial Intelligence Unit), as well as the total amount of funds involved;

The *réviseur d'entreprises agréé* shall provide the following:

- an assessment of the adequacy of the internal procedures of the electronic money institution relating to the prevention of money laundering and terrorist financing as well as their compliance with the provisions of Articles 28 to 30 of the Law and the laws and regulations that apply to electronic money institutions;
- a statement on the existence of a regular control of compliance with procedures by the internal audit department;
- assessment of the electronic money institution's analysis of money laundering and terrorist financing risks to which it is exposed. The *réviseur d'entreprises agréé* shall verify if the procedures, infrastructures and controls with respect to fighting money laundering and terrorist financing set up by the institution, as well as the extent of the measures taken by the electronic money institution, are appropriate considering the money laundering and terrorist financing risks to which the electronic money institution is or might be exposed notably through its activities, the nature of its customers and the products and services offered.

The *réviseur d'entreprises agréé* shall state how the reviewed files were sampled and indicate the coverage ratio of the population (number of files reviewed/total number of customers; volume of funds reviewed/total volume of funds).

Where the *réviseur d'entreprises agréé* identifies cases of non-compliance with the legal or regulatory provisions or deficiencies, the *réviseur d'entreprises agréé* shall give detailed indications enabling the CSSF to assess the situation (number of pending incomplete files as a percentage of the total number of reviewed files, details of the deficiencies identified, etc.). (cf. Chapter V. "Reporting to the CSSF by virtue of Article 37(4) of the Law" below).

Note: It should be noted that the *réviseurs d'entreprises agréés* shall also inform the CSSF of all the denunciations made under Article 5 of the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, and which concern a professional of the financial sector under the supervision of the CSSF.

10. Compliance with the provisions to which Articles 48-2 (Issuance and redeemability of electronic money) and 48-3 (Prohibition of interest) of the Law refer

The long form report shall describe the means implemented by the electronic money institution to ensure compliance with the provisions of:

- Article 48-2 of the Law concerning the issuance and redeemability of electronic money.
- Article 48-3 of the Law concerning the prohibition to grant interest.

The *réviseur d'entreprises agréé* shall assess the appropriateness of the means implemented by the electronic money institution to ensure compliance with the aforementioned provisions.

11. Compliance with the provisions to which Article 58(1) and (2) of the Law refer

The long form report shall assess the means implemented by the electronic money institution to ensure compliance with the provisions of:

- Title III of the Law entitled "Transparency of conditions and information requirements for payment services";
- Title IV of the Law entitled "Rights and obligations in relation to the provision and use of payment services";
- Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 and of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds by the payment institution.

The *réviseur d'entreprises agréé* shall assess the appropriateness of the means implemented by the electronic money institution to ensure compliance with the aforementioned provisions.

12. Branches, agents and foreign natural or legal persons through which the electronic money institution intends to distribute or redeem electronic money

The electronic money institution's branches shall be included by the *réviseur d'entreprises agréé* in the annual audit of the electronic money institution.

This control shall be handled in a separate chapter in the long form report for every individual branch and must cover the prudential aspects (financial situation, risks, organisation) as well as compliance with the provisions applicable to the prevention of money laundering and terrorist financing, as well as conduct of business rules.

For every branch, the following shall be provided in particular:

- an organisation chart;
- a description of the activities;
- an analysis of risks incurred by the branch, including money laundering and terrorist financing risk;
- a description and assessment of the risk management in the branch;
- a description and assessment of the procedures as regards internal control implemented by the branch, the existence of an own internal audit function and the modes of integration of the branch within the inspection plan of the internal audit service of the electronic money institution;

- the serious deficiencies that the control of the internal audit at the branch may have revealed;
- an assessment of the appropriateness of the administrative and accounting organisation;
- the implementation and verification of compliance with procedures as regards the prevention of money laundering and terrorist financing within the branch;
- the implementation and verification of compliance with Luxembourg procedures as regards the rules of conduct within the branch;
- the integration of the branch from an accounting point of view;
- the integration of the IT and processing systems of the branch and their integration in the IT and processing systems of the electronic money institution.

The long form report shall also indicate the legal and regulatory provisions that the branches established in another Member State of the European Community (including Iceland, Liechtenstein and Norway) shall comply with in the host country, as well as the compliance with those provisions by the institution concerned.

If the electronic money institution intends to provide payment services or, respectively, to distribute or redeem electronic money through agents located abroad, the long form report shall describe in a separate chapter the control and support framework of these agents by the electronic money institution. Specific attention shall be paid to the professional obligations relating to the fight against money laundering and terrorist financing. The *réviseur d'entreprises agréé* shall assess the control and support framework of these agents by the electronic money institution.

If the electronic money institution intends to distribute or redeem electronic money through natural or legal persons located abroad, the long form report shall describe in a separate chapter the control and support framework of these agents by the electronic money institution. The *réviseur d'entreprises agréé* shall assess the control and support framework of these natural or legal persons by the electronic money institution.

13. Relations with affiliated undertakings

The *réviseur d'entreprises agréé* shall certify in the long form report that it has examined the intragroup transactions and specify if they are carried out at arm's length.

The *réviseur d'entreprises agréé* shall state how the audited transactions were sampled and indicate the coverage ratio of the population.

The following shall be described and commented upon, where applicable:

- the policies and goals pursued by the electronic money institution in its relationship with the affiliated companies;
- the type of executed intragroup transactions;
- the guarantees issued to the benefit of/received by the affiliated companies;
- the part of interests received from the affiliated undertakings, or the part of interests paid to the affiliated undertakings, respectively;
- the fees charged for services provided or received;
- the split of the margins received on clients transferred in the group, etc.

14. Follow-up on issues raised in previous reports

The *réviseur d'entreprises agréé* shall follow up on serious irregularities and weaknesses observed during the previous audits and described in detail either in the previous long form report, or in a separate management letter addressed to the management.

15. General conclusion

The *réviseur d'entreprises agréé* shall take position in the general conclusion on the key points of its audit, so as to provide an overview of the situation of the audited electronic money institution.

More generally, the *réviseur d'entreprises agréé* shall summarise the main notes and conclusions of the report. The *réviseur d'entreprises agréé* shall also indicate the main recommendations and observations made to the management of the electronic money institution within the scope of the audit of the annual accounts, as well as the management's response thereto. Where the *réviseur d'entreprises agréé* addresses a separate management letter to the management, the general conclusion only needs to refer to the document concerned, which must be annexed to the long form report.

The *réviseur d'entreprises agréé* shall indicate the complete list of all the documents issued during its audit of the annual accounts of the financial year under review.

The *réviseur d'entreprises agréé* shall describe the existence of any problems of the electronic money institution with foreign supervisory authorities.

IV. Consolidated long form audit report

The consolidated long form audit report shall be drawn up according to the same principles and format as the annual audit report. It shall however focus on the specific information regarding the consolidated situation.

The consolidated long form audit report shall specify the scope of consolidation and any changes thereto during the year under review.

Where the electronic money institution subject to the consolidated audit of the CSSF is exempt from publishing consolidated accounts or where the scope of consolidation of the publication of consolidated accounts differs from the scope of consolidation of the supervision on a consolidated basis, the consolidated long form audit report shall be based on the accounting situation corresponding to the scope of consolidated supervision carried out by the CSSF.

The aim of the consolidated long form audit report is to provide an overview of the situation of the group and give indications on the organisation and activities of the group, as well as on the management and structure of the group's risks.

The consolidated long form audit report shall briefly present the different points of the format for each consolidated subsidiary.

V. Notifications to the CSSF in accordance with Article 37(4) of the Law

In accordance with Article 37(4) of the Law, the *réviseur d'entreprises agréé* is required to notify the CSSF, without delay, of any decision of which he becomes aware during the course of his audit of the annual accounting documents of an electronic money institution or another statutory mission, where this fact or decision:

- relates to this electronic money institution, and
- is such as to:
 - constitute a material breach of the provisions of the Law or the implementing regulatory provisions, or
 - affect the continuous functioning of the electronic money, or

- entail the refusal of the certification of accounts or the expression of reservations thereon.

The *réviseur d'entreprises agréé* is also required to report, without delay, to the CSSF any fact or decision meeting one of the three above-mentioned criteria, of which he becomes aware during the course of his audit of the annual accounting documents or another legal mission for a company linked by virtue of control to the electronic money institution for which he carries out a legal mission.

"Another legal mission" means, among others:

- a specific audit performed within the electronic money institution at the CSSF's request in accordance with Article 37(2) of the Law;
- an intervention in the framework of a proposed merger of undertakings, pursuant to the LCC Law;
- an intervention in the framework of a split project of undertakings, pursuant to the LCC Law;
- an intervention when the share capital is being paid up with contributions other than in cash, pursuant to the LCC Law.

Examples of facts or decisions falling or likely to fall under the reporting obligation to the CSSF:

- credit risk/counterparty risk assessment issues (including the potential chargeback risk);
- frauds likely to entail important losses;
- important disputes;
- financial difficulties in a branch or subsidiary;
- major event in the branch or subsidiary;
- significant errors in the periodical statements as defined by Circular CSSF 11/522;
- granting of an interim dividend whereas the electronic money institution has insufficient or barely sufficient own funds;
- important and repeated exceeding of the internal limits;
- change of activity without appropriate infrastructure;
- serious deficiencies in the internal control system;
- important increase of the risks linked to the electronic money institution's activity;

- non-compliance with the professional obligations arising from the legislation on the fight against money laundering and terrorist financing applicable to electronic money institutions;
- non-compliance with the professional obligations as laid down in Titles III and IV of the Law;
- non-compliance with the provisions to which Articles 48-2 (Issuance and redeemability of electronic money) and 48-3 (Prohibition of interest) of the Law refer;
- non-compliance with the provisions to which Article 24-10 of the Law concerning safeguarding requirements for funds refer;
- breach by a manager of the "four-eyes" principle (e.g. during a procedure for the granting of credit);
- major conflicts within the decision-making bodies of the institution;
- unexpected departure of a manager of a key management position;
- important malfunctioning in the IT organisation or infrastructure;
- major reorganisation;
- change of shareholder with a qualifying holding without the prior approval of the CSSF;
- acquisition of a qualifying holding without the prior approval of the CSSF.

The *réviseur d'entreprises agréé* is also required to provide the CSSF with all information and attestations it requires with respect to matters the *réviseur d'entreprises agréé* is or should be aware of within the scope of his mission.

In return for this reporting requirement to the CSSF, Article 37(5) of the Law guarantees that the *réviseur d'entreprises agréé*, who, in good faith, discloses confidential information pursuant to paragraph (4) of that Article, is protected against any third party claims.

VI. Final provisions

The CSSF may, upon a written and duly justified request, exempt an electronic money institution from submitting an annual long form audit report or a consolidated long form audit report according to the nature and inherent risks of its activities. Circular CSSF 12/534 specifies the terms and conditions for the exemption regime for electronic money institutions as provided for in Article 48-1 of the Law.

The provisions of this circular shall be binding in their entirety for the annual accounts of the financial year starting **after** 31 December 2012.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General