

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

Luxembourg, 31 March 2016

To all the persons and undertakings supervised by the CSSF, as well as the persons falling within the scope of Part II and of Chapter 1 of Part III of the law on prospectuses for securities

**CIRCULAR CSSF 16/635**

**Re: Update of Circular CSSF 12/539 on the technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities and general overview of the aforementioned law as amended by Circular CSSF 15/632**

Ladies and Gentlemen,

1. This circular amends Circular CSSF 12/539 as amended by Circular CSSF 15/632 by taking into account the changes introduced by Commission delegated regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.
2. Circular CSSF 12/539 as amended by Circular CSSF 15/632 is amended in accordance with Annex 1 to this circular.

Annex 1 includes the changes brought by this circular to Circular CSSF 12/539 as amended by Circular CSSF 15/632 in track changes in order to ease the reading and understanding. For your convenience a clean version is attached as Annex 2.

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Françoise KAUTHEN  
Director

Claude SIMON  
Director

Claude MARX  
Director General

Annex 1; Annex 2

COMMISSION de SURVEILLANCE  
du SECTEUR FINANCIER

ANNEX 1

2015

Luxembourg, ~~28 December~~ 31 March 2016

To all the persons and undertakings supervised by the CSSF, as well as the persons falling within the scope of Part II and of Chapter 1 of Part III of the law on prospectuses for securities

**CIRCULAR CSSF 12/539 as  
amended by Circulars CSSF  
15/632 and CSSF 16/635**

**Re: Technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities and general overview of the aforementioned law**

Ladies and Gentlemen,

The **Prospectus Law**<sup>1</sup> on prospectuses for securities sets up the framework for the drawing-up, approval and distribution of prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market.

The first part of this circular sets out the European context of the Prospectus Law, the major amendments introduced by the law of 3 July 2012 to the regulations governing prospectuses, the three regimes set up by the Prospectus Law for the approval of prospectuses, as well as the competences and missions of the CSSF in this field.

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<sup>1</sup> Law of 10 July 2005 on prospectuses for securities as amended by the law of 3 July 2012

The purpose of the second part of this circular is to specify the technical procedures regarding submission to the CSSF of documents for the approval, notification or filing regarding offers of securities to the public and admissions of securities to trading on a regulated market.

The second part of this circular takes into account the changes introduced by **Directive 2014/51/EU** of 16 April 2014<sup>2</sup> to article 5(4) of **Directive 2003/71/EC**<sup>3</sup> previously amended in 2010 by **Directive 2010/73/EU**<sup>4</sup> (hereafter, the **Prospectus Directive**) as well as the provisions in relation to the submission of applications for approval, their receipt and processing, the changes to the draft documents submitted for approval and the submission of the final versions of these documents by the **delegated regulation (EU) 2016/301**<sup>5</sup> (hereafter, the **Regulation 2016/301**). In this context, it should be noted that the Regulation 2016/301 has entered into force on 24 March 2016 and also contains other provisions, which have not been covered in the present circular.

In this context, it is important to note that the notion of "offer to the public of securities" as defined in the Prospectus Law and the ensuing "obligation to publish a prospectus" are analysed in a specific CSSF circular published on the CSSF's website (<http://www.cssf.lu/en/supervision/securities-markets/prospectus/regulations/circulars/http://www.cssf.lu/en/issuers-prospectuses/prospectus-securities/>).

Moreover, other more specific interpretation items relating to the Prospectus Law are taken up in an FAQ document that is regularly updated by the CSSF and published on its website (<http://www.cssf.lu/en/supervision/securities-markets/prospectus/faq/http://www.cssf.lu/en/issuers-prospectuses/prospectus-securities/>).

This circular amends with immediate effect ~~from 1 January 2016~~ Circular CSSF 12/539 of 6 July 2012 concerning technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities and general overview of the

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<sup>2</sup> Directive 2014/51/EU of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)

<sup>3</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

<sup>4</sup> Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

<sup>5</sup> Commission delegated regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004

aforementioned law as amended by Circular CSSF 15/632, by taking into account the changes introduced by the Regulation 2016/301 ~~Directive 2014/51/EU of 16 April 2014~~.

## **PART I. Presentation of the Prospectus Law**

### **I.1. The European context**

The purpose of the Prospectus Directive is to allow companies to raise capital across the European Union more easily and at lower costs, based on a single approval granted by the authority of the home Member State, as well as to strengthen investor protection by ensuring that all prospectuses, wherever they are approved and published in the European Union, provide investors with the comprehensive, consistent and complete information they need to take their investment decision.

The Prospectus Directive is supplemented by **Regulation (EC) No 809/2004**<sup>6</sup> which includes in particular the schedules applicable to the various issues.

According to these EU texts, no prospectus shall be published until it was granted “approval” by the home Member State’s competent authority, which is defined as the “positive act at the outcome of the scrutiny of the completeness of the prospectus by the home Member State’s competent authority including the consistency of the information given and its comprehensibility”. The competent authority of the home Member State transmits to the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be, its decision regarding the approval of the prospectus, within 10 working days of the submission of the draft prospectus (within 20 working days if the offer to the public involves securities issued by an issuer who does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public).

The amendments introduced in 2010 by Directive 2010/73/EU mainly aim to simplify and enhance the application of Directive 2003/71/EC.

### **I.2. Main amendments introduced by the law of 3 July 2012**

Directive 2010/73/EU has been implemented into Luxembourg law through the law of 3 July 2012<sup>7</sup>.

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<sup>6</sup> *Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, as amended - notably by Directive 2010/73/EU*

<sup>7</sup> *Law of 3 July 2012 transposing Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; amending the law of 10 July 2005 on prospectuses for securities; amending the law of 11*

The main amendments introduced by this law to the applicable regulations in the field of prospectuses are to be found in Part II of the Prospectus Law:

- reduction of information to be provided when securities issued by small and medium-sized undertakings or companies with reduced market capitalisation are offered to the public and admitted to trading on a regulated market;
- reduction of information to be provided when securities guaranteed by a Member State are offered to the public and admitted to trading on a regulated market;
- adaptation and standardisation of the format and content of the prospectus summary that are further specified in **Regulation (EU) 486/2012**<sup>8</sup>;
- clarification that where a prospectus has been approved, the intermediaries placing the securities for the account of the issuer or with his/her consent, are exempted from publishing a prospectus;
- clarification of the exemption to the requirement to publish a prospectus where undertakings offer or allocate their securities to their staff or to that of an affiliated undertaking;
- alignment of the definition of "qualified investors" of Directive 2003/71/EC with the definitions of "professional client" and "eligible counterparty" of Directive 2004/39/EC on markets in financial instruments;
- abolishment of the annual document; and
- adaptation of certain thresholds that are no longer in line with market reality. Thus, for example, the threshold according to which a "retail investor" shall be distinguished from a "professional investor" has been raised from EUR 50,000 to EUR 100,000.

The same changes are set out, in a similar way, in Part III of the Prospectus Law.

### **I.3. The Prospectus Law sets up three prospectus approval regimes**

The Prospectus Law provides for three different prospectus regimes:

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*January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market*

<sup>8</sup> *Commission Delegated Regulation (EU) No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements*

- a first regime (Part II of the Prospectus Law) with respect to offers of securities to the public and admissions of securities to trading on a regulated market, which are subject to EU harmonisation, and transpose the rules of the Prospectus Directive;
- a second regime (Part III of the Prospectus Law) defining the Luxembourg rules that apply to offers to the public and to admissions to trading on a regulated market of securities and other comparable instruments, which are outside the scope of the Prospectus Directive, and providing for a simplified prospectus regime; and
- a third regime (Part IV of the Prospectus Law), setting up a Luxembourg-specific regime applying to admissions of securities to trading on a market which is not included in the list of regulated markets published by the European Commission.

#### **I.4. Competences and duties of the CSSF**

The Prospectus Law designates the CSSF as the competent authority to ensure the enforcement of the provisions of Part II (when Luxembourg is the home Member State), which deals with the drawing-up, approval and distribution of prospectuses to be published when securities are offered to the public and/or admitted to trading on a regulated market, which are subject to EU harmonisation under the Prospectus Directive (Article 22 of the Prospectus Law) and of the provisions of Chapter 1 of Part III 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 of the Prospectus Law) 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 for the admission of securities to trading on a regulated market, which are subject to EU harmonisation under the Prospectus Directive, when Luxembourg is the home Member State. The submission, filing and communication of documents in accordance with Part II of the Prospectus Law 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 equivalent securities not covered by Part II. The submission, filing and communication of documents shall also be made with the CSSF. The simplified prospectuses subject to Part III do not benefit from the European passport and the rules as regards their content are in principle laid down in Circular CSSF 05/210 of 10 October 2005 on the drawing-up of a simplified prospectus within the scope of Chapter 1 of Part III of the Prospectus Law.

The Société de la Bourse de Luxembourg (which is currently the only market operator authorised to operate one or several securities markets situated or operating within the

Luxembourg territory) is 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 the regulated market operated by the Société de la Bourse de Luxembourg) 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).

In this context, it should be noted that the competence as regards the decisions to admit securities to trading on a regulated market and/or to the official listing shall not be affected by the decision to approve the prospectus. Indeed, the decisions with respect to the admission of securities to a market and/or official listing 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 (the Rules and regulations of the Société de la Bourse de Luxembourg), it being understood that compliance of the underlying documents with the laws and regulations on prospectuses is one of the requirements to be fulfilled.

The CSSF's powers (Article 22 of Part II and Article 43 of Part III) entail that the issuers, offerors and persons asking for the admission to trading on a regulated market fall under the direct authority of the CSSF, when Luxembourg is the home Member State as defined in the Prospectus Law. The CSSF thus has general and direct competences with respect to the information that issuers must publish in the prospectus or in the supplement to the prospectus. Moreover, the CSSF is notably empowered to suspend an offer to the public or the admission to trading on a regulated market for 10 working days, prohibit an offer to the public, suspend trading on a regulated market at any moment, impose on the issuer, offeror or person asking for admission to trading on a regulated market to cease any practice which is contrary to the Prospectus Law.

A particularly important power in the context of financial markets is that the CSSF can make public the fact that the issuer, offeror or person asking for admission to trading on a regulated market is failing to comply with its obligations. Furthermore, the Prospectus Law provides that the CSSF is empowered to impose administrative sanctions.

### **I.5. Publication of prospectuses**

The Prospectus Law does not take up the option provided by the Prospectus Directive to require publication of a notice stating how the prospectus is made available and where it can be obtained by the public. Indeed, the Prospectus Law integrates all the possibilities for publication provided by the Prospectus Directive (newspapers, printed brochures, website). Moreover, the documents approved by the CSSF are published by the CSSF automatically and free of charge for a period of at least twelve months on the website of the Société de la Bourse de Luxembourg (<http://www.bourse.lu>).

The publication requirement for documents approved by the CSSF that lies with the issuer in accordance with Articles 16 and 38, paragraphs 1 to 3 of the Prospectus Law, is thereby fulfilled in Luxembourg<sup>9</sup>.

Nevertheless, the issuer may in addition use other means of publication. Investors will thereby be able to have effective, in principle free-of-charge and real-time access to information. Furthermore, every investor may receive, upon request, a free-of-charge paper copy of the prospectus. This request should be made to the issuer, offeror, person who asked for the admission of securities to trading on a regulated market or to the financial intermediaries placing or selling the securities concerned.

## **PART II. Technical specifications regarding the submission to the CSSF of documents for approval, notification or filing when securities are offered to the public or admitted to trading on a regulated market**

The purpose of the second part of this circular is to specify the technical procedures regarding the submission of documents to the CSSF. Indeed, it is of major importance to strictly follow these procedures in order to allow the CSSF to ensure a prompt and efficient handling.

### **II.1. Submission of documents to the CSSF for approval and approval procedure**

#### **II.1.1. Documents concerned**

- the registration document;
- the prospectus (constituted of a single document or of separate documents);
- the base prospectus;
- the supplement; and
- the simplified prospectus.

#### **II.1.2. Submission procedure of documents for approval**

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 “**Submission for approval**”), the CSSF has set up certain mechanisms for the receipt of the documents. The official submission to 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 “**Filing Agent(s)**” - *déposant(s)*).

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<sup>9</sup> Indeed, pursuant to Article 16(4) and Article 38(4) of the Prospectus Law, the CSSF has delegated the publication of prospectuses to the Société de la Bourse de Luxembourg, which will publish them on its website at <http://www.bourse.lu>.

The documents mentioned above ~~shall~~ be filed *via* e-mail to the address [prospectus.approval@cssf.lu](mailto:prospectus.approval@cssf.lu). ~~If a Filing Agent uses other means of communication, such as filing of paper copies, an electronic storage medium (CD, DVD or USB stick) must be enclosed. In that case, the documents must be sent to the following postal address:~~

~~Commission de Surveillance du Secteur Financier  
Marchés d'Actifs Financiers / Prospectus  
283, route d'Arlon  
L-2991 LUXEMBOURG~~

All final documents submitted to the CSSF in the context of an approval are considered to be filed for the purpose of Articles 15 and 36 respectively of the Prospectus Law.

~~In principle, a~~All the files shall be submitted in searchable PDF format.

**(A) The Submission for approval shall include the following documents:**

- (1) The documents to be approved (and, where applicable, the documents incorporated by reference, which have not yet been approved by or filed with the CSSF in accordance with the Prospectus Law or the Transparency Law<sup>10</sup>).
- (2) An information document (hereafter, the “**Entry Form**”), which includes the following information in predefined order:
  - (i) legal ground (indicating the Part, and, where applicable, the Chapter of the Prospectus Law under which the approval is requested);
  - (ii) the purpose of the submission (indicating if it concerns an offer to the public and/or admission to trading and indication of the Member State(s) in which an offer to the public and/or admission to trading is contemplated);
  - (iii) an exhaustive list reproducing the accurate designation (including their dates) of all the documents composing the submission (including the documents containing information incorporated by reference in the document(s) to be approved and, in case the respective submission does not include the documents to be incorporated by reference, also indication of either the CSSF file number(s) of the file(s) in relation to which these documents have already been approved by or filed with the CSSF in accordance with the Prospectus Law or the exact name of the issuer for which these documents have already been filed with the CSSF in

<sup>10</sup> Law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

accordance with the Transparency Law as well as the reference number assigned to this issuer by the CSSF in view of the filing of regulated information in the context of the Transparency Law) composing the submission;

- (iv) for documents to be approved other than supplements, the number of the Annexes to Regulation (EC) 809/2004 according to which the document has been drawn up, accompanied by a justification stating the reason for which the annexes concerned have been used;
- (v) the different languages used in the document to be approved (including in the documents incorporated by reference);
- (vi) a reference to all useful information to be considered in the context of the approval such as e.g. all interaction with the CSSF that has taken place beforehand (request for advice, questions, meetings, similar file, etc.);
- (vii) the timetable of the transaction and the requested date of approval;
- (viii) the contact details (name, postal address, email, telephone number) of the following persons:
  - the Filing Agent;
  - the person in charge of drawing up the document to be approved;
  - the issuer (where applicable, stating that the issuer is being incorporated) offeror or person asking for admission to trading on a regulated market on behalf of whom the file has been submitted;
  - any additional~~the~~ contact persons, i.e. the persons (other than the issuer, offeror or person asking for admission to trading on a regulated market) to whom the CSSF will send all the communications (comments, copy of the approval, etc.);
  - the contact person who will receive the invoice and pay the fee;
  - the person entitled to confirm that the version filed for final approval and publication is the final version of the prospectus.

The Entry Form shall always be up to date and the persons mentioned in the list are the only ones that may, in the context of the file concerned, intervene with the CSSF. Any subsequent change to the information contained in this document must be notified to the CSSF as a new version of the Entry Form, marked-up in order to identify any change compared to the previous version.

- (3) For every document other than a supplement, a cross reference list indicating precisely where, in the document, the information required under the

Annexes to Regulation (EC) 809/2004 can be found and, as regards base prospectuses, a specific indication to which information category (A, B, C; categories introduced by Regulation (EU) 486/2012) they belong or a version of the document, which is annotated in the margin to identify which sections of the document correspond to the relevant disclosure requirements set out in Regulation (EC) 809/2004. A document which is annotated in the margin shall be accompanied by a document identifying any items contained in the relevant annexes to Regulation (EC) 809/2004 that have not been included in the document because they were not applicable, given the nature of the issuer, offeror or person asking for admission to trading or the securities being offered to the public or admitted to trading. The cross reference list or the annotation in the margin of the document marked up version is not mandatory where the presentation order in the document concerned corresponds to the order laid down in the schedules and building blocks of Regulation (EC) 809/2004 based on which the document has been drawn up or where the document is annotated in the margin to identify which sections of the document correspond to the relevant disclosure requirements set out in Regulation (EC) 809/2004.

(4) If the issuer, offeror or person asking for admission to trading on a regulated market is requesting the CSSF to authorise the omission of information from the document according to article 10(2) of the Prospectus Law, a reasoned request to that effect (the “Omission Request”).

(5) If the issuer, offeror or person asking for admission to trading on a regulated market wishes the CSSF to notify the competent authority of host Member State(s) upon approval of the document, with a certificate of approval according to article 19 of the Prospectus Law, a Notification Request Form (as defined in section II.2 here below).

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~~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 Submission for approval is confirmed no later than by close of business on the second working day following the receipt by an electronic acknowledgement of receipt, indicating the internal number assigned to the file (hereafter, the "**CSSF File Number**") as well as the name(s) of the person(s) in charge of the file to which queries regarding the application may be addressed, to the issuer, offeror or person asking for admission to trading on a regulated market and any additional contact person(s) indicated in the Entry Form ~~address indicated by the Filing Agent.~~ The date of acknowledgement shall not affect the date of submission of the draft document, within the meaning of article 7 (2) of the Prospectus Law, from which the time limits for notifications commence.

**(B) Every additional submission following a Submission for approval must include the following data in the following order:**

- (1) The CSSF File Number concerned.
- (2) The exact designation of all the documents comprised in the additional submission.
- (3) A clean version accompanied by a marked-up version compared to the previous version of the document, which has been amended since the previous filing. Where only limited changes are made, marked extracts of the document, showing all changes from the preceding version of the document, shall be acceptable. Where, due to technical difficulties related to the marking of the document, a marked-up version or a marked extract of the document cannot be provided, each change made to the preceding version of the document shall be identified in written form to the CSSF (together with a detailed description of such technical difficulties).
- (4) Where the CSSF notified the issuer, offeror or person asking for admission to trading on a regulated market that it considers that the draft document submitted for approval does not meet the requirement of completeness, including consistency of the information given and its comprehensibility, the draft of such document to be submitted subsequently shall be accompanied by an explanation as to how the incompleteness notified by the CSSF has been addressed.

The final version of document for approval (i.e. after the CSSF has confirmed that it has no more comments) shall be submitted to the CSSF in searchable PDF format that can not be modified together with (i.) a written confirmation that no changes have been made since the previous submission or (ii.) the disclosure in writing of any information changed since the previous submission. The final draft shall not be annotated in the margin.

Where the CSSF considers, on reasonable grounds, that the document submitted to it is incomplete or that supplementary information is needed, for instance due to inconsistencies or incomprehensibility of certain information provided, it shall notify the issuer, offeror or person asking for admission to trading of the need for supplementary information and the reasons therefore, by way of email.

Where the CSSF considers the incompleteness to be of a minor nature or timing to be of utmost importance, the CSSF may notify the issuer, offeror or person asking for admission to trading orally, in which case there will be no interruption of the time limits for approval of the document as referred to in article 7 (4) of the Prospectus Law.

Where the issuer, offeror or person asking for admission to trading on a regulated market is unable or unwilling to provide the supplementary information requested, the CSSF shall be entitled to refuse the approval of the document and terminate the review process.

## **II.1.3. Additional information concerning the approval procedure**

### **II.1.3.1. Application of the scrutiny time limits**

The time limit as laid down in Article 7(2) and (3) and Article 31(2) and (3) of the Prospectus Law runs from the working day following that of the Submission for approval. 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(5) and 31(5) is communicated by the CSSF to the Filing Agent. 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 Filing Agent 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 Articles 13(1) and 39(1), which provide for a maximum time limit of seven days for the approval.

### **II.1.3.2. Communication of the approval**

The CSSF communicates the approval by way of email to the issuer, the offeror or the person asking for the admission of securities to trading on a regulated market as well as to any additional contact persons address(es) indicated in the Entry Form, on the day of the decision of approval and sends a confirmation in writing to the postal address of the issuer, offeror or person asking for the admission. In the case of a refusal to approve the document(s), the decision of the CSSF shall contain the reasons for such refusal.

### **II.1.3.3. Applicable fees**

Any request for approval is subject to payment of a fee due as from the Submission for approval of the file to the CSSF. The Grand-ducal regulation relating to the fees to be levied by the CSSF introduces the rate of the lumpsum fees the CSSF levies on the persons asking for admission to trading on a regulated market, offerors or issuers seeking approval of a prospectus under Part II and Chapter 1 of Part III of the Prospectus Law. This Grand-ducal regulation is available on the CSSF's website.

## **II.2. Submission of documents to the CSSF for notification by the CSSF ("passporting")**

In accordance with Article 19 of the Prospectus Law, requests for the notification by the CSSF to one of several competent authorities of host Member States ~~shall~~ be sent via email at: [prospectus.approval@cssf.lu](mailto:prospectus.approval@cssf.lu). ~~If a Filing Agent uses other means of communication, such as filing of paper copies, an electronic storage medium (CD, DVD~~

~~or USB-stick) must be enclosed. In that case, the documents must be sent to the following postal address:~~

~~Commission de Surveillance du Secteur Financier  
Marchés d'Actifs Financiers / Prospectus  
283, route d'Arlon  
L-2991 LUXEMBOURG~~

~~In principle, all the files shall be submitted in PDF format.~~

The submission shall be composed of the following documents:

- (1) A form (hereafter, the “**Notification Request Form**”) indicating the following information:
  - (i) the CSSF File Number concerned (in case the Notification Request Form is sent after the allocation of this number following a Submission for approval);
  - (ii) the host Member State(s) for which the notification is requested;
  - (iii) the date for which the notification is requested.
- (2) Where appropriate, any necessary translation produced under the responsibility of the issuer or person having to draw up the document approved or to be approved.

All these documents shall be submitted in searchable PDF format that can not be modified.

## **II.3 Submission of documents to be filed with the CSSF (“Filing”)**

### **II.3.1. Documents concerned:**

- the final terms of base prospectuses approved by the CSSF (if Luxembourg is the home Member State) (Articles 8(4) and 32(4) of the Prospectus Law);
- the final offer price and the amount of securities offered (Articles 10(1) and 34(1) of the Prospectus Law).

### **II.3.2. Final terms of base prospectuses approved by the CSSF**

Articles 8(4) and 32(4) of the Prospectus Law impose on the issuer the obligation to file with the CSSF final terms of base prospectuses approved by the CSSF (if Luxembourg is the home Member State).

This filing shall take place as soon as practicable and if possible in advance of the beginning of the offer or admission to trading on a regulated market. In view of the filing of t~~The final terms -filed~~ pursuant to Articles 8(4) and 32(4) of the Prospectus Law, the

~~CSSF publishes on its website a dedicated filing form, which is accessible -shall be filed via email at <https://finalterms.apps.cssf.lu>FT.filing@cssf.lu.~~

~~The following attributes shall be entered in this formfiling of the final terms shall contain the following attributes:~~

~~(1) In the subject of the email~~

- ~~the CSSF File Number allocated to the base prospectus to which the final terms relate;~~
- ~~the name of the issuer.~~

~~(2) In the body of the email~~

- ~~the name and e-mail address of the Filing Agent (phone number optional);~~
- ~~the CSSF File Number allocated to the base prospectus to which the final terms relate;~~
- ~~the date of approval of the base prospectus;~~
- ~~the ISIN code of the securities the final terms relate to;~~
- ~~the home Member State; (3166-1 standard, i.e. LU);~~
- ~~the name of the issuer;~~
- ~~the date of approval of the base prospectus;~~
- ~~the ISIN code of the securities the final terms relate to; and~~
- ~~the list of the host Member State(s); (3166-1 standard, e.g. FR, DE).~~

~~;~~

~~The final terms and any summary and translations thereof shall be uploaded via the form as one single physical file, either~~

- ~~as one PDF (containing the final terms and any summary and translation put into one single searchable PDF document that can not be modified); or~~
- ~~as one ZIP file (containing the final terms and any summary and translation as multiple separated searchable PDF documents that can not be modified); and~~
- ~~the name of the attached ZIP file or the PDF file as the case may be.~~

### **II.3.3. The final offer price and the amount of offered securities**

Articles 10(1) and 34(1) of the Prospectus Law impose on the issuer the obligation to file the final offer price and the amount of offered securities with the CSSF when Luxembourg is the home Member State. The filing shall take place as soon as practicable. The final offer price and the amount of offered securities shall be filed *via* email at [prospectus.filing@cssf.lu](mailto:prospectus.filing@cssf.lu). ~~If a Filing Agent uses other means of communication, such as filing of paper copies, an electronic storage medium (CD, DVD or USB stick) must be enclosed. In that case, the files must be sent to the following postal address:~~

~~Commission de Surveillance du Secteur Financier  
Marchés d'Actifs Financiers / Prospectus~~

~~283, route d'Arlon~~  
~~L-2991 LUXEMBOURG~~

The form used for the filing (hereafter, the “**Filing Form**”) shall include the following information:

- (i) the name of the issuer;
- (ii) the CSSF File Number allocated to the prospectus to which the information relates;
- (iii) the approval date of the prospectus to which the information relates;
- (iv) the final price;
- (v) the amount of offered securities; and
- (vi) the publication date and the means of publication of the information referred to in (iv) and (v) above.

~~In principle,~~ the Filing Form shall be submitted in PDF format.

**II.4. Summary of the technical specifications:**

<b>Purpose</b>	<b>Document(s) to provide</b>	<b>Email address <u>or link</u></b>	<b>Other means</b>
<b>Approval</b>	Document(s) to be approved (registration document, (base) prospectus or supplement)  <b>and</b>  Entry Form  <b>and</b>  cross-reference list (where applicable)  <b><u>and</u></b>  <u>the Omission Request (where applicable)</u>	<b>prospectus.approval@cssf.lu</b>	<del>Paper, enclosing a CD, DVD or USB stick</del>
<b>Notification</b>	Notification Request Form  <b>and</b>  any necessary translation	<b>prospectus.approval@cssf.lu</b>	<del>Paper, enclosing a CD, DVD or USB stick</del>
<b>Filing of final</b>	<del>F</del> final terms (including,	<b><u>https://finalterms.apps.cssf.luFT.fili</u></b>	

<b>terms of base prospectuses approved by the CSSF</b>	where applicable, the summary and its translations annexed thereto)	<del>ng@cssf.lu</del>	
<b><u>Filing of final offer price and amount of offered securities</u></b> (Luxembourg being the home Member State)	Filing Form	<b>prospectus.filing@cssf.lu</b>	<del>Paper, enclosing a CD, DVD or USB stick</del>

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

~~Françoise~~  
~~KAUTHEN~~  
~~Claude~~  
~~SIMON~~  
Director

~~Claude~~  
~~SIMON~~  
~~Andrée~~  
~~BILLON~~  
Director

~~Simone~~ DELCOURT  
  
Director

~~Claude~~  
~~MARX~~  
~~Jean~~  
~~GUILLE~~  
Director General

COMMISSION de SURVEILLANCE  
du SECTEUR FINANCIER

ANNEX 2

Luxembourg, 31 March 2016

To all the persons and undertakings supervised by the CSSF, as well as the persons falling within the scope of Part II and of Chapter 1 of Part III of the law on prospectuses for securities

**CIRCULAR CSSF 12/539 as  
amended by Circulars CSSF  
15/632 and CSSF 16/635**

**Re: Technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities and general overview of the aforementioned law**

Ladies and Gentlemen,

The **Prospectus Law**<sup>1</sup> on prospectuses for securities sets up the framework for the drawing-up, approval and distribution of prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market.

The first part of this circular sets out the European context of the Prospectus Law, the major amendments introduced by the law of 3 July 2012 to the regulations governing prospectuses, the three regimes set up by the Prospectus Law for the approval of prospectuses, as well as the competences and missions of the CSSF in this field.

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<sup>1</sup> *Law of 10 July 2005 on prospectuses for securities as amended by the law of 3 July 2012*

The purpose of the second part of this circular is to specify the technical procedures regarding submission to the CSSF of documents for the approval, notification or filing regarding offers of securities to the public and admissions of securities to trading on a regulated market.

The second part of this circular takes into account the changes introduced by **Directive 2014/51/EU** of 16 April 2014<sup>2</sup> to article 5(4) of **Directive 2003/71/EC**<sup>3</sup> previously amended in 2010 by **Directive 2010/73/EU**<sup>4</sup> (hereafter, the **Prospectus Directive**) as well as the provisions in relation to the submission of applications for approval, their receipt and processing, the changes to the draft documents submitted for approval and the submission of the final versions of these documents by the **delegated regulation (EU) 2016/301** (hereafter, the **Regulation 2016/301**)<sup>5</sup>. In this context, it should be noted that the Regulation 2016/301 has entered into force on 24 March 2016 and also contains other provisions, which have not been covered in the present circular.

In this context, it is important to note that the notion of "offer to the public of securities" as defined in the Prospectus Law and the ensuing "obligation to publish a prospectus" are analysed in a specific CSSF circular published on the CSSF's website (<http://www.cssf.lu/en/supervision/securities-markets/prospectus/regulations/circulars/>).

Moreover, other more specific interpretation items relating to the Prospectus Law are taken up in an FAQ document that is regularly updated by the CSSF and published on its website (<http://www.cssf.lu/en/supervision/securities-markets/prospectus/faq/>).

This circular amends with immediate effect Circular CSSF 12/539 of 6 July 2012 concerning technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities and general overview of the aforementioned law as amended by Circular CSSF 15/632, by taking into account the changes introduced by the Regulation 2016/301.

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<sup>2</sup> *Directive 2014/51/EU of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)*

<sup>3</sup> *Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC*

<sup>4</sup> *Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market*

<sup>5</sup> *Commission delegated regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004*

## **PART I. Presentation of the Prospectus Law**

### **I.1. The European context**

The purpose of the Prospectus Directive is to allow companies to raise capital across the European Union more easily and at lower costs, based on a single approval granted by the authority of the home Member State, as well as to strengthen investor protection by ensuring that all prospectuses, wherever they are approved and published in the European Union, provide investors with the comprehensive, consistent and complete information they need to take their investment decision.

The Prospectus Directive is supplemented by **Regulation (EC) No 809/2004**<sup>6</sup> which includes in particular the schedules applicable to the various issues.

According to these EU texts, no prospectus shall be published until it was granted “approval” by the home Member State’s competent authority, which is defined as the “positive act at the outcome of the scrutiny of the completeness of the prospectus by the home Member State’s competent authority including the consistency of the information given and its comprehensibility”. The competent authority of the home Member State transmits to the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be, its decision regarding the approval of the prospectus, within 10 working days of the submission of the draft prospectus (within 20 working days if the offer to the public involves securities issued by an issuer who does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public).

The amendments introduced in 2010 by Directive 2010/73/EU mainly aim to simplify and enhance the application of Directive 2003/71/EC.

### **I.2. Main amendments introduced by the law of 3 July 2012**

Directive 2010/73/EU has been implemented into Luxembourg law through the law of 3 July 2012<sup>7</sup>.

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<sup>6</sup> *Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, as amended - notably by Directive 2010/73/EU*

<sup>7</sup> *Law of 3 July 2012 transposing Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; amending the law of 10 July 2005 on prospectuses for securities; amending the law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market*

The main amendments introduced by this law to the applicable regulations in the field of prospectuses are to be found in Part II of the Prospectus Law:

- reduction of information to be provided when securities issued by small and medium-sized undertakings or companies with reduced market capitalisation are offered to the public and admitted to trading on a regulated market;
- reduction of information to be provided when securities guaranteed by a Member State are offered to the public and admitted to trading on a regulated market;
- adaptation and standardisation of the format and content of the prospectus summary that are further specified in **Regulation (EU) 486/2012**<sup>8</sup>;
- clarification that where a prospectus has been approved, the intermediaries placing the securities for the account of the issuer or with his/her consent, are exempted from publishing a prospectus;
- clarification of the exemption to the requirement to publish a prospectus where undertakings offer or allocate their securities to their staff or to that of an affiliated undertaking;
- alignment of the definition of "qualified investors" of Directive 2003/71/EC with the definitions of "professional client" and "eligible counterparty" of Directive 2004/39/EC on markets in financial instruments;
- abolishment of the annual document; and
- adaptation of certain thresholds that are no longer in line with market reality. Thus, for example, the threshold according to which a "retail investor" shall be distinguished from a "professional investor" has been raised from EUR 50,000 to EUR 100,000.

The same changes are set out, in a similar way, in Part III of the Prospectus Law.

### **I.3. The Prospectus Law sets up three prospectus approval regimes**

The Prospectus Law provides for three different prospectus regimes:

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<sup>8</sup> *Commission Delegated Regulation (EU) No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements*

- a first regime (Part II of the Prospectus Law) with respect to offers of securities to the public and admissions of securities to trading on a regulated market, which are subject to EU harmonisation, and transpose the rules of the Prospectus Directive;
- a second regime (Part III of the Prospectus Law) defining the Luxembourg rules that apply to offers to the public and to admissions to trading on a regulated market of securities and other comparable instruments, which are outside the scope of the Prospectus Directive, and providing for a simplified prospectus regime; and
- a third regime (Part IV of the Prospectus Law), setting up a Luxembourg-specific regime applying to admissions of securities to trading on a market which is not included in the list of regulated markets published by the European Commission.

#### **I.4. Competences and duties of the CSSF**

The Prospectus Law designates the CSSF as the competent authority to ensure the enforcement of the provisions of Part II (when Luxembourg is the home Member State), which deals with the drawing-up, approval and distribution of prospectuses to be published when securities are offered to the public and/or admitted to trading on a regulated market, which are subject to EU harmonisation under the Prospectus Directive (Article 22 of the Prospectus Law) and of the provisions of Chapter 1 of Part III 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 of the Prospectus Law) 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 for the admission of securities to trading on a regulated market, which are subject to EU harmonisation under the Prospectus Directive, when Luxembourg is the home Member State. The submission, filing and communication of documents in accordance with Part II of the Prospectus Law 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 equivalent securities not covered by Part II. The submission, filing and communication of documents shall also be made with the CSSF. The simplified prospectuses subject to Part III do not benefit from the European passport and the rules as regards their content are in principle laid down in Circular CSSF 05/210 of 10 October 2005 on the drawing-up of a simplified prospectus within the scope of Chapter 1 of Part III of the Prospectus Law.

The Société de la Bourse de Luxembourg (which is currently the only market operator authorised to operate one or several securities markets situated or operating within the Luxembourg territory) is 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 the regulated market operated by the Société de la Bourse de Luxembourg) 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).

In this context, it should be noted that the competence as regards the decisions to admit securities to trading on a regulated market and/or to the official listing shall not be affected by the decision to approve the prospectus. Indeed, the decisions with respect to the admission of securities to a market and/or official listing 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 (the Rules and regulations of the Société de la Bourse de Luxembourg), it being understood that compliance of the underlying documents with the laws and regulations on prospectuses is one of the requirements to be fulfilled.

The CSSF's powers (Article 22 of Part II and Article 43 of Part III) entail that the issuers, offerors and persons asking for the admission to trading on a regulated market fall under the direct authority of the CSSF, when Luxembourg is the home Member State as defined in the Prospectus Law. The CSSF thus has general and direct competences with respect to the information that issuers must publish in the prospectus or in the supplement to the prospectus. Moreover, the CSSF is notably empowered to suspend an offer to the public or the admission to trading on a regulated market for 10 working days, prohibit an offer to the public, suspend trading on a regulated market at any moment, impose on the issuer, offeror or person asking for admission to trading on a regulated market to cease any practice which is contrary to the Prospectus Law.

A particularly important power in the context of financial markets is that the CSSF can make public the fact that the issuer, offeror or person asking for admission to trading on a regulated market is failing to comply with its obligations. Furthermore, the Prospectus Law provides that the CSSF is empowered to impose administrative sanctions.

### **I.5. Publication of prospectuses**

The Prospectus Law does not take up the option provided by the Prospectus Directive to require publication of a notice stating how the prospectus is made available and where it can be obtained by the public. Indeed, the Prospectus Law integrates all the possibilities for publication provided by the Prospectus Directive (newspapers, printed brochures, website). Moreover, the documents approved by the CSSF are published by the CSSF automatically and free of charge for a period of at least twelve months on the website of the Société de la Bourse de Luxembourg (<http://www.bourse.lu>).

The publication requirement for documents approved by the CSSF that lies with the issuer in accordance with Articles 16 and 38, paragraphs 1 to 3 of the Prospectus Law, is thereby fulfilled in Luxembourg<sup>9</sup>.

Nevertheless, the issuer may in addition use other means of publication. Investors will thereby be able to have effective, in principle free-of-charge and real-time access to information. Furthermore, every investor may receive, upon request, a free-of-charge paper copy of the prospectus. This request should be made to the issuer, offeror, person who asked for the admission of securities to trading on a regulated market or to the financial intermediaries placing or selling the securities concerned.

## **PART II. Technical specifications regarding the submission to the CSSF of documents for approval, notification or filing when securities are offered to the public or admitted to trading on a regulated market**

The purpose of the second part of this circular is to specify the technical procedures regarding the submission of documents to the CSSF. Indeed, it is of major importance to strictly follow these procedures in order to allow the CSSF to ensure a prompt and efficient handling.

### **II.1. Submission of documents to the CSSF for approval and approval procedure**

#### **II.1.1. Documents concerned**

- the registration document;
- the prospectus (constituted of a single document or of separate documents);
- the base prospectus;
- the supplement; and
- the simplified prospectus.

#### **II.1.2. Submission procedure of documents for approval**

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 “**Submission for approval**”), the CSSF has set up certain mechanisms for the receipt of the documents. The official submission to 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 “**Filing Agent(s)**” - *déposant(s)*).

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<sup>9</sup> Indeed, pursuant to Article 16(4) and Article 38(4) of the Prospectus Law, the CSSF has delegated the publication of prospectuses to the Société de la Bourse de Luxembourg, which will publish them on its website at <http://www.bourse.lu>.

The documents mentioned above shall be filed *via* e-mail to the address [prospectus.approval@cssf.lu](mailto:prospectus.approval@cssf.lu).

All final documents submitted to the CSSF in the context of an approval are considered to be filed for the purpose of Articles 15 and 36 respectively of the Prospectus Law.

All the files shall be submitted in searchable PDF format.

**(A) The Submission for approval shall include the following documents:**

- (1) The documents to be approved (and, where applicable, the documents incorporated by reference, which have not yet been approved by or filed with the CSSF in accordance with the Prospectus Law or the **Transparency Law**<sup>10</sup>).
- (2) An information document (hereafter, the “**Entry Form**”), which includes the following information in predefined order:
  - (i) legal ground (indicating the Part, and, where applicable, the Chapter of the Prospectus Law under which the approval is requested);
  - (ii) the purpose of the submission (indicating if it concerns an offer to the public and/or admission to trading and indication of the Member State(s) in which an offer to the public and/or admission to trading is contemplated);
  - (iii) an exhaustive list reproducing the accurate designation (including their dates) of all the documents composing the submission (including the documents containing information incorporated by reference in the document(s) to be approved and, in case the respective submission does not include the documents to be incorporated by reference, also indication of either the CSSF file number(s) of the file(s) in relation to which these documents have already been approved by or filed with the CSSF in accordance with the Prospectus Law or the exact name of the issuer for which these documents have already been filed with the CSSF in accordance with the Transparency Law as well as the reference number assigned to this issuer by the CSSF in view of the filing of regulated information in the context of the Transparency Law) ;
  - (iv) for documents to be approved other than supplements, the number of the Annexes to Regulation (EC) 809/2004 according to which the document has been drawn up, accompanied by a justification

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<sup>10</sup> *Law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market*

stating the reason for which the annexes concerned have been used;

- (v) the different languages used in the document to be approved (including in the documents incorporated by reference);
- (vi) a reference to all useful information to be considered in the context of the approval such as e.g. all interaction with the CSSF that has taken place beforehand (request for advice, questions, meetings, similar file, etc.);
- (vii) the timetable of the transaction and the requested date of approval;
- (viii) the contact details (name, postal address, email, telephone number) of the following persons:
  - the Filing Agent;
  - the person in charge of drawing up the document to be approved;
  - the issuer (where applicable, stating that the issuer is being incorporated) offeror or person asking for admission to trading on a regulated market on behalf of whom the file has been submitted;
  - any additional contact persons, i.e. the persons (other than the issuer, offeror or person asking for admission to trading on a regulated market) to whom the CSSF will send all the communications (comments, copy of the approval, etc.);
  - the contact person who will receive the invoice and pay the fee;
  - the person entitled to confirm that the version filed for final approval and publication is the final version of the prospectus.

The Entry Form shall always be up to date and the persons mentioned in the list are the only ones that may, in the context of the file concerned, intervene with the CSSF. Any subsequent change to the information contained in this document must be notified to the CSSF as a new version of the Entry Form, marked-up in order to identify any change compared to the previous version.

(3) For every document other than a supplement, a cross reference list indicating precisely where, in the document, the information required under the Annexes to Regulation (EC) 809/2004 can be found and, as regards base prospectuses, a specific indication to which information category (A, B, C; categories introduced by Regulation (EU) 486/2012) they belong or a version of the document, which is annotated in the margin to identify which sections of the document correspond to the relevant disclosure requirements set out in Regulation (EC) 809/2004. A document which is annotated in the margin shall be accompanied by a document identifying any items contained in the relevant annexes to Regulation (EC) 809/2004 that have not been included in the document because

they were not applicable, given the nature of the issuer, offeror or person asking for admission to trading or the securities being offered to the public or admitted to trading. The cross reference list or the annotation in the margin of the document is not mandatory where the presentation order in the document concerned corresponds to the order laid down in the schedules and building blocks of Regulation (EC) 809/2004 based on which the document has been drawn up or where the document is annotated in the margin to identify which sections of the document correspond to the relevant disclosure requirements set out in Regulation (EC) 809/2004.

(4) If the issuer, offeror or person asking for admission to trading on a regulated market is requesting the CSSF to authorise the omission of information from the document according to article 10(2) of the Prospectus Law, a reasoned request to that effect (the “**Omission Request**”).

(5) If the issuer, offeror or person asking for admission to trading on a regulated market wishes the CSSF to notify the competent authority of host Member State(s) upon approval of the document, with a certificate of approval according to article 19 of the Prospectus Law, a Notification Request Form (as defined in section II.2 here below).

The Submission for approval is confirmed no later than by close of business on the second working day following the receipt by an electronic acknowledgement of receipt, indicating the internal number assigned to the file (hereafter, the “**CSSF File Number**”) as well as the name(s) of the person(s) in charge of the file to which queries regarding the application may be addressed, to the issuer, offeror or person asking for admission to trading on a regulated market and any additional contact person(s) indicated in the Entry Form. The date of acknowledgement shall not affect the date of submission of the draft document, within the meaning of article 7 (2) of the Prospectus Law, from which the time limits for notifications commence.

**(B) Every additional submission following a Submission for approval must include the following data in the following order:**

- (1) The CSSF File Number concerned.
- (2) The exact designation of all the documents comprised in the additional submission.
- (3) A clean version accompanied by a marked-up version compared to the previous version of the document, which has been amended since the previous filing. Where only limited changes are made, marked extracts of the document, showing all changes from the preceding version of the document, shall be acceptable. Where, due to technical difficulties related to the marking of the document, a marked-up version or a marked extract of the document cannot be provided, each change made to the preceding version of the document shall be

identified in written form to the CSSF (together with a detailed description of such technical difficulties).

(4) Where the CSSF notified the issuer, offeror or person asking for admission to trading on a regulated market that it considers that the draft document submitted for approval does not meet the requirement of completeness, including consistency of the information given and its comprehensibility, the draft of such document to be submitted subsequently shall be accompanied by an explanation as to how the incompleteness notified by the CSSF has been addressed.

The final version of document for approval (i.e. after the CSSF has confirmed that it has no more comments) shall be submitted to the CSSF in searchable PDF format that can not be modified together with (i.) a written confirmation that no changes have been made since the previous submission or (ii.) the disclosure in writing of any information changed since the previous submission. The final draft shall not be annotated in the margin.

Where the CSSF considers, on reasonable grounds, that the document submitted to it is incomplete or that supplementary information is needed, for instance due to inconsistencies or incomprehensibility of certain information provided, it shall notify the issuer, offeror or person asking for admission to trading of the need for supplementary information and the reasons therefore, by way of email.

Where the CSSF considers the incompleteness to be of a minor nature or timing to be of utmost importance, the CSSF may notify the issuer, offeror or person asking for admission to trading orally, in which case there will be no interruption of the time limits for approval of the document as referred to in article 7 (4) of the Prospectus Law.

Where the issuer, offeror or person asking for admission to trading on a regulated market is unable or unwilling to provide the supplementary information requested, the CSSF shall be entitled to refuse the approval of the document and terminate the review process.

### **II.1.3. Additional information concerning the approval procedure**

#### **II.1.3.1. Application of the scrutiny time limits**

The time limit as laid down in Article 7(2) and (3) and Article 31(2) and (3) of the Prospectus Law runs from the working day following that of the Submission for approval. 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(5) and 31(5) is communicated by the CSSF to the Filing Agent. 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 Filing Agent 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 Articles 13(1) and 39(1), which provide for a maximum time limit of seven days for the approval.

### **II.1.3.2. Communication of the approval**

The CSSF communicates the approval by way of email to the issuer, the offeror or the person asking for the admission of securities to trading on a regulated market as well as to any additional contact persons indicated in the Entry Form, on the day of the decision of approval and sends a confirmation in writing to the postal address of the issuer, offeror or person asking for the admission. In the case of a refusal to approve the document(s), the decision of the CSSF shall contain the reasons for such refusal.

### **II.1.3.3. Applicable fees**

Any request for approval is subject to payment of a fee due as from the Submission for approval of the file to the CSSF. The Grand-ducal regulation relating to the fees to be levied by the CSSF introduces the rate of the lumpsum fees the CSSF levies on the persons asking for admission to trading on a regulated market, offerors or issuers seeking approval of a prospectus under Part II and Chapter 1 of Part III of the Prospectus Law. This Grand-ducal regulation is available on the CSSF's website.

## **II.2. Submission of documents to the CSSF for notification by the CSSF ("passporting")**

In accordance with Article 19 of the Prospectus Law, requests for the notification by the CSSF to one of several competent authorities of host Member States shall be sent *via* email at: [prospectus.approval@cssf.lu](mailto:prospectus.approval@cssf.lu).

The submission shall be composed of the following documents:

- (1) A form (hereafter, the “**Notification Request Form**”) indicating the following information:
  - (i) the CSSF File Number concerned (in case the Notification Request Form is sent after the allocation of this number following a Submission for approval);
  - (ii) the host Member State(s) for which the notification is requested;
  - (iii) the date for which the notification is requested.
  
- (2) Where appropriate, any necessary translation produced under the responsibility of the issuer or person having to draw up the document approved or to be approved.

All these documents shall be submitted in searchable PDF format that can not be modified.

### **II.3 Submission of documents to be filed with the CSSF (“Filing”)**

#### **II.3.1. Documents concerned:**

- the final terms of base prospectuses approved by the CSSF (if Luxembourg is the home Member State) (Articles 8(4) and 32(4) of the Prospectus Law);
- the final offer price and the amount of securities offered (Articles 10(1) and 34(1) of the Prospectus Law).

#### **II.3.2. Final terms of base prospectuses approved by the CSSF**

Articles 8(4) and 32(4) of the Prospectus Law impose on the issuer the obligation to file with the CSSF final terms of base prospectuses approved by the CSSF (if Luxembourg is the home Member State).

This filing shall take place as soon as practicable and if possible in advance of the beginning of the offer or admission to trading on a regulated market. In view of the filing of the final terms pursuant to Articles 8(4) and 32(4) of the Prospectus Law, the CSSF publishes on its website a dedicated filing form, which is accessible via <https://finalterms.apps.cssf.lu>.

The following attributes shall be entered in this form:

- the name and e-mail address of the Filing Agent (phone number optional);
- the CSSF File Number allocated to the base prospectus to which the final terms relate;
- the date of approval of the base prospectus;
- the name of the issuer;
- the ISIN code of the securities the final terms relate to; and
- the list of the host Member State(s).

The final terms and any summary and translations thereof shall be uploaded *via* the form as one single physical file, either

- as one PDF (containing the final terms and any summary and translation put into one single searchable PDF document that can not be modified); or
- as one ZIP file (containing the final terms and any summary and translation as multiple separated searchable PDF documents that can not be modified).

#### **II.3.3. The final offer price and the amount of offered securities**

Articles 10(1) and 34(1) of the Prospectus Law impose on the issuer the obligation to file the final offer price and the amount of offered securities with the CSSF when Luxembourg is the home Member State. The filing shall take place as soon as practicable. The final offer price and the amount of offered securities shall be filed *via* email at [prospectus.filing@cssf.lu](mailto:prospectus.filing@cssf.lu).

The form used for the filing (hereafter, the “**Filing Form**”) shall include the following information:

- (i) the name of the issuer;
- (ii) the CSSF File Number allocated to the prospectus to which the information relates;
- (iii) the approval date of the prospectus to which the information relates;
- (iv) the final price;
- (v) the amount of offered securities; and
- (vi) the publication date and the means of publication of the information referred to in (iv) and (v) above.

The Filing Form shall be submitted in PDF format.

**II.4. Summary of the technical specifications:**

<b>Purpose</b>	<b>Document(s) to provide</b>	<b>Email address or link</b>
<b>Approval</b>	Document(s) to be approved (registration document, (base) prospectus or supplement)  <b>and</b>  Entry Form  <b>and</b>  cross-reference list (where applicable)  <b>and</b>  the Omission Request (where applicable)	<b>prospectus.approval@cssf.lu</b>
<b>Notification</b>	Notification Request Form	<b>prospectus.approval@cssf.lu</b>

	<b>and</b>  any necessary translation	
<b>Filing of final terms of base prospectuses approved by the CSSF</b>	Final terms (including, where applicable, the summary and its translations annexed thereto)	<b><a href="https://finalterms.apps.cssf.lu">https://finalterms.apps.cssf.lu</a></b>
<b><u>Filing of final offer price and amount of offered securities</u></b> (Luxembourg being the <u>home</u> Member State)	Filing Form	<b><a href="mailto:prospectus.filing@cssf.lu">prospectus.filing@cssf.lu</a></b>

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Françoise  
KAUTHEN  
Director

Claude SIMON  
  
Director

Claude MARX  
  
Director General