

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

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

CSSF Regulation N° 15-03 laying down detailed rules for the application of Article 46 of the law of 12 July 2013 on alternative investment fund managers on the marketing of foreign alternative investment funds to retail investors in Luxembourg

(Mémorial A – No. 224 of 2 December 2015)

The Executive Board of the Commission de Surveillance du Secteur Financier,

Having regard to Article 108a of the Constitution;

Having regard to the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), and in particular Article 9(2) thereof;

Having regard to the Law of 12 July 2013 on alternative investment fund managers, and in particular Article 46 thereof;

Decides:

Article 1

Definitions

In addition to the definitions set out in Article 1 of the law of 12 July 2013 on alternative investment fund managers that apply for the purposes of this regulation, “foreign alternative investment funds (foreign AIFs)” shall mean alternative investment funds (AIFs) within the meaning of Directive 2011/61/EU on Alternative Investment Fund Managers which are established in a Member State of the European Union other than Luxembourg or in a third country.

Article 2

Object

This regulation lays down detailed rules for the application of Article 46 of the law of 12 July 2013 on alternative investment fund managers by establishing the procedure and the conditions applicable to the marketing of foreign AIFs to retail investors in Luxembourg.

Article 3

Scope

(1) Without prejudice to the provisions provided for in paragraph 2, this regulation shall apply to the marketing to retail investors in Luxembourg of:

- (a) foreign AIFs managed by an AIFM established in Luxembourg which is authorised pursuant to Chapter 2 of the law of 12 July 2013 on alternative investment fund managers;
- (b) foreign AIFs managed by an AIFM established in another EU Member State which is authorised pursuant to Chapter II of Directive 2011/61/EU on Alternative Investment Fund Managers;
- (c) foreign AIFs managed by an AIFM established in a third country which is authorised pursuant to Chapter II of Directive 2011/61/EU on Alternative Investment Fund Managers, subject to Article 66(3) of said Directive.

(2) This regulation does not apply to the marketing of foreign AIFs in Luxembourg to:

- well-informed investors within the meaning of Article 2(1) of the law of 13 February 2007 relating to specialised investment funds, or of Article 2 of the law of 15 June 2004 relating to the Investment company in risk capital (SICAR);
- eligible investors pursuant to Regulation (EU) No 345/2013 on European venture capital funds;
- eligible investors pursuant to Regulation (EU) No 346/2013 on European social entrepreneurship funds;
- eligible investors pursuant to Regulation (EU) No 2015/760 on European long-term investment funds.

Article 4

Marketing authorisation by the CSSF

(1) Prior to marketing its units or shares to retail investors in Luxembourg, any foreign AIF must have obtained an authorisation for such marketing by the CSSF, in accordance with the provisions of this regulation.

(2) Foreign AIFs authorised to market their units or shares pursuant to this regulation are registered by the CSSF on the "List of foreign AIFs authorised to market their units or shares to retail investors in Luxembourg in accordance with Article 46 of the law of 12 July 2013 on alternative investment fund managers".

(3) The marketing authorisation pursuant to this regulation may not be granted prior to the completion of the notification procedure required for the marketing to professional investors, as provided for by the relevant provisions of the law of 12 July 2013 on alternative investment fund managers or of Directive 2011/61/EU on Alternative Investment Fund Managers.

Without prejudice to the documents and information to provide to the CSSF in the context of the notification procedure required for the marketing to professional investors referred to in subparagraph 1, the authorisation request for the marketing to retail investors in Luxembourg shall include the additional items set out in Article 5 of this regulation.

Article 5

Marketing authorisation request

(1) The authorisation request to be filed with the CSSF pursuant to this regulation shall include the following documents and information:

- (a) a certificate by the relevant supervisory authority of the home Member State of the foreign AIF certifying that the latter is authorised and subject to a permanent supervision in its home State;
- (b) the addendum to the prospectus/issuing document of the foreign AIF which includes specific information for the marketing in Luxembourg;
- (c) the latest annual report of the foreign AIF;
- (d) the curriculum vitae of the conducting persons (*dirigeants*) of the foreign AIF;
- (e) the draft agreement to be entered into between the foreign AIF and the Luxembourg paying agent;
- (f) if the foreign AIF is a feeder AIF, information on the master AIF including information on where the master AIF is established, the master AIF's constitutive documents and the prospectus/issuing document of the master AIF.

The addendum referred to under item (b), which will be part of the foreign AIF's prospectus/issuing document, shall include all information useful to investors in Luxembourg, for them to invest with full knowledge of the facts. The information to be included in said addendum shall comprise, among others:

- appropriate information on the risks inherent to the foreign AIF's investment policy;
- information on the fees and expenses that may be charged to investors;
- the name, address and duties of the paying agent in Luxembourg from which investors may request the subscription, redemption or conversion of their units or shares;
- the place where the foreign AIF's latest prospectus/issuing document, its constitutive documents and the latest financial reports are made available;
- details on how the foreign AIF's net asset value is published;
- the name of the Luxembourg newspaper in which the investor notices are published.

(2) In addition to the documents and information referred to in paragraph 1, the CSSF may request any additional document and information it deems necessary for the scrutiny of the authorisation request.

Article 6

Marketing authorisation conditions

(1) In addition to the requirement to comply with the conditions set out in Article 46 of the law of 12 July 2013 on alternative investment fund managers, the CSSF grants authorisation to a foreign AIF to market its units or shares to retail investors in Luxembourg only on condition that the AIF concerned be managed by a single manager, which may be either a manager established in Luxembourg authorised pursuant to Chapter 2 of the law of 12 July 2013 on alternative investment fund managers, or a manager authorised pursuant to Chapter II of Directive 2011/61/EU established in another Member State or third country.

The management of the foreign AIF shall moreover permanently comply with all the provisions provided for in Directive 2011/61/EU on Alternative Investment Fund Managers.

(2) Where the foreign AIF is a feeder AIF, the marketing authorisation referred to in paragraph 1 is, in addition, subject to the condition that the master AIF be subject, in its home State, to a permanent supervision performed by a competent authority provided for by law, in order to ensure the protection of investors. In this case, cooperation between the CSSF and the supervisory authority of the master AIF must also be ensured.

(3) The marketing authorisation implies for the foreign AIF the obligation to inform the CSSF of any material changes to the documents and information provided in accordance with Article 5 of this regulation and upon which the CSSF based its decision to grant authorisation.

Article 7

Foreign AIF types which may be authorised to market their units or shares to retail investors in Luxembourg

(1) Subject to paragraph 2 of this article, a foreign AIF shall comply with the following rules to be eligible for marketing its units or shares to retail investors in Luxembourg:

- (a) Periodicity of the calculation of the issue and redemption prices of the foreign AIF's units or shares:

Foreign AIFs must determine the issue and redemption prices of their units or shares at sufficiently close and fixed intervals, but at least once a month.

- (b) Risk spreading:

Foreign AIFs must demonstrate sufficient risk spreading.

In general, the CSSF considers that a sufficient risk-spreading principle is complied with where the investment restrictions of a foreign AIF are in line with the following guidelines:

A. Securities

1. The foreign AIF may not invest more than 10% of its assets in unlisted securities or securities which are not traded on another regulated market which operates regularly and is recognised and open to the public.
2. The foreign AIF may not acquire more than 10% of the same type of securities issued by the same issuer.
3. The foreign AIF may not invest more than 20% of its assets in securities of a same issuer.

The restrictions set out under items 1, 2 and 3 above do not apply to:

- investments in securities issued or guaranteed by an OECD Member State or its regional or local authorities or by EU, regional or global supranational institutions and bodies;
- investments in target UCIs subject to risk-spreading requirements which are at least similar to those applicable to UCIs subject to Part II of the law of 17 December 2010 relating to undertakings for collective investment.

B. Borrowings

The foreign AIF may not take on borrowings for an amount exceeding 25% of its net assets, without prejudice to item D. of this paragraph.

C. Use of financial derivatives

When using financial derivatives, the foreign AIF must ensure an appropriate risk spreading of the underlying assets.

Furthermore, the relevant foreign AIF must be subject to risk-spreading and investment restriction rules similar to those applicable to UCIs subject to Part II of the law of 17 December 2010 relating to undertakings for collective investment adopting so-called alternative investment strategies.

D. Real estate assets

In order to ensure a minimum risk spreading, the foreign AIF may not invest more than 20% of its assets in a single real estate object.

Furthermore, the aggregate of all borrowings of the foreign AIF may not exceed on average 50% of the valuation of all its properties.

(2) The CSSF may grant derogations from the rules set out under paragraph 1 based on an adequate justification and depending on the specific investment policy of a given foreign AIF.

Article 8

Provisions governing the payments to investors, the redemptions and subscriptions of units or shares and the dissemination of information

(1) A foreign AIF which is authorised to market its units or shares to retail investors in Luxembourg pursuant to this regulation shall appoint a credit institution to ensure the payments to investors and the redemptions and subscriptions of units or shares in Luxembourg.

(2) A foreign AIF marketing its units or shares to retail investors in Luxembourg shall furthermore take appropriate measures to ensure that the information and documents it has to produce are available to investors in Luxembourg.

The information and documents referred to in the preceding subparagraph shall be provided to investors in Luxembourg in either: French, German, English or Luxembourgish. Such information may notably be provided on a website.

Article 9

Applicable marketing rules in Luxembourg

Without prejudice to Article 8 of this regulation, the provisions of the following laws shall be complied with when marketing securities to investors in Luxembourg:

- Law of 8 April 2011 concerning the implementation of a Consumer Code, as amended.

Article 10

Termination of marketing

The CSSF shall be informed whenever a foreign AIF decides to no longer market its units or shares to retail investors in Luxembourg on the basis of Article 46 of the law of 12 July 2013 on alternative investment fund managers. Consequently, the relevant foreign AIF shall be withdrawn from the list referred to in Article 4(2) of this regulation.

Article 11

Publication

This regulation shall be published in the *Mémorial* and on the CSSF's website.

The regulation shall enter into force on the first day of the month following its publication in the *Mémorial*.

Foreign UCIs other than UCITS which have been authorised for marketing to retail investors in Luxembourg shall be considered, ipso jure, to be authorised pursuant to this regulation at the moment of its entry into force.

Luxembourg, 26 November 2015

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General