Commission de Surveillance du Secteur Financier

FAQ on AML/CFT asset due diligence obligations in accordance with CSSF Regulation No 12-02

13 December 2024 – Version 1

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Update information

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Table of contents

CONTEXT

This document is of interest to professionals within the scope of CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing, as amended ("CSSF Regulation 12-02").

This document refers to questions & answers in relation to the implementation of Article 34(2) of CSSF Regulation 12-02.

DISCLAIMER

This document does not refer in any way to international financial restrictive measures and their respective specific requirements (i.e. Targeted Financial Sanctions) to be complied with by professionals.

This document solely provides clarifications on the AML/CFT asset due diligence to be performed pursuant to a risk-based approach and the related ML/TF risk assessment.

1. General statement

The CSSF draws the attention to the fact that it is the responsibility of each professional to carry out their ML/TF risk assessment and to establish, where necessary, appropriate measures to mitigate the threats and vulnerabilities identified.

2. Scope

1. Should an ML/TF risk assessment and related AML/CFT due diligence measures be conducted on securities admitted to trading on a regulated market?

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As a result of recent assessments in relation to ML/TF threats and vulnerabilities, as well as, of peer reviews conducted by the CSSF, including input from the members of the Public Private Partnership OPC AML, it can be concluded that securities admitted to trading on a regulated market[1] are less exposed to money laundering and terrorist financing risks due to existing market disclosures and controls.

As a consequence, in order to be compliant with Article 34(2) of CSSF Regulation 12-02, the CSSF considers that, for the sake of risk assessment and mitigation, it is sufficient for the professional to demonstrate, upon request, that such securities are actually admitted to trading on a regulated market.

3. Frequency

1. Should the risk assessment of the assets not admitted to trading on a regulated market be performed on an annual basis if there is no change on the asset?

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The initial risk assessment is used to determine the extent of the AML/CFT due diligence that shall be conducted by the professional. The higher the ML/TF risk, the more thorough the due diligence needs to be. These due diligence measures need to be adapted should the risk assessment change. In practice, it is acceptable that if no relevant change happened during the year, a renewal of the annual risk assessment is not required.

[1] These assets may also be referred to as "listed assets" in CSSF surveys.

2. When is AML/CFT due diligence required on assets?

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In accordance with Article 34(2) of CSSF Regulation 12-02, which provides that: *"In the framework of investment business, the professionals shall carry out an analysis of the ML/TF risk posed by the investment and take due diligence measures adapted to the risk assessed and documented*".

The CSSF expects that AML/CFT due diligence measures are to be performed by professionals when operations take place on assets (e.g. purchase, transfer, sale) that are not admitted to trading on a regulated market[2] and/or when a change in the asset has resulted in a higher ML/TF risk.

[2] These assets may also be referred to as "unlisted assets" in CSSF surveys.