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Commission de Surveillance
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FAQ Law of 17 December 2010

18 November 2024 - Version 20

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07/08/2020	Publication of question 1.13 – version 9
10/03/2020	Publication of question 9 – version 8
02/09/2019	Publication of question 8 – version 7
11/04/2019	Modification of question 6.1 – version 6
05/01/2018	Deletion of question 1.4 – version 5
06/07/2017	Publication of questions 5, 6 and 7 – version 4
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08/12/2015	First publication - version 1

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Definitions

ETF:	Exchange Traded Funds
EU:	European Union
Group link:	A situation in which two or more undertakings or entities belong to the same group within the meaning of Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council or international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council.
IFM	Investment Fund Manager as defined within Circular CSSF 18/698, as applicable
IML 91/75:	Circular IML 91/75 relating to the revision and remodelling of the rules to which Luxembourg undertakings governed by the Law of 30 March 1988 on undertakings for collective investment ("UCI") are subject
Independent:	For the purposes of section 5 of the present Q&A, the term "independent" shall be construed in the sense of Article 24, paragraph 2 of the UCITS V Delegated Regulation.
KIID:	Key Investor Information Document
Law of 1915:	The Luxembourg Law of 10 August 1915 on commercial companies.
Law of 1993:	Law of 5 April 1993 on the financial sector
Law of 2004:	Law of 15 June 2004 relating to the Investment company in risk capital ("SICARs")
Law of 2007:	Law of 13 February 2007 relating to specialised investment funds ("SIFs")
Law of 2010:	Law of 17 December 2010 relating to undertakings for collective investment
Law of 2013:	Law of 12 July 2013 on alternative investment fund managers
MiFID:	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFID rules:	• Law of 30 May 2018 on markets in financial instruments and transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

- Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR)
- Grand-ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits;
- Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive; and
- Relevant delegated acts, implementing acts as well as guidelines and FAQs

Monistic entity: A Luxembourg commercial company that is governed by either a board of directors (for a Luxembourg commercial company set up under the form of a *société anonyme*, hereafter an S.A.) or a board of managers (for a Luxembourg commercial company set up under the form of a *société à responsabilité limitée*, hereafter an S.à r.l.).

NAV: Net Asset Value

OECD: Organisation for Economic Co-operation and Development

OTC: Over-the-counter

Other UCI: AIFs, non-AIFs other than UCITS and third-country UCIs equivalent to UCITS

For Luxembourg entities, non-AIFs other than UCITS are:

Specialised investment funds established under the Law of 2007 if they do not fulfil the criteria under Article 1(39) of the Law of 2013;

SICARs established under the Law of 2004 if they do not fulfil the criteria under Article 1(39) of the Law of 2013

Any entity not regulated under the Law of 2010, the Law of 2007 or the Law of 2004 that does not meet the criteria of Article 1(39) of the Law of 2013

PIE Regulation: Regulation No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public interest entities

PRIIPs KID: Key investor document for packaged retail and insurance-based investment products

PRIIPs Regulation:	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
Regulation 2008:	Grand-ducal Regulation of 8 February 2008 relating to certain definitions of the amended Law of 20 December 2002 on undertakings for collective investment and implementing Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions
Self-managed SICAV:	An investment company which has not designated a management company within the meaning of Article 27 of the Law of 2010 relating to undertakings for collective investment.
SICAV:	An investment company with variable capital under the Law of 2010.
SICAR:	Investment companies in risk capital governed by the Law of 2004
SIF:	Specialised investment funds governed by the Law of 2007
UCI:	Undertakings for collective investment (UCITS and other UCI)
UCITS:	Undertaking for collective investment in transferable securities subject to Part I of the Law of 2010 and EU non-Luxembourg UCITS falling under the scope of the UCITS Directive
UCITS Directive:	Directive 2009/65/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 as regards depositary functions, remuneration policies and sanctions
UCITS V Delegated Regulation:	Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries.

1. Eligible assets

Please note that this section only refers to the eligibility of assets and not to the diversification rules that apply to investments made in eligible assets. In addition to eligibility rules, eligible assets must in any case comply with relevant provisions on diversification rules.

1. What are the applicable provisions with regard to eligible assets for investment by UCITS?

Published on 8 December 2015

The following provisions are applicable to eligible assets:

- Chapter 5 of the Law of 2010,
- Regulation 2008,
- CESR guidelines,
- ESMA opinion 2012/721,
- ESMA ETFs guidelines,
- ESMA ETFs FAQ.

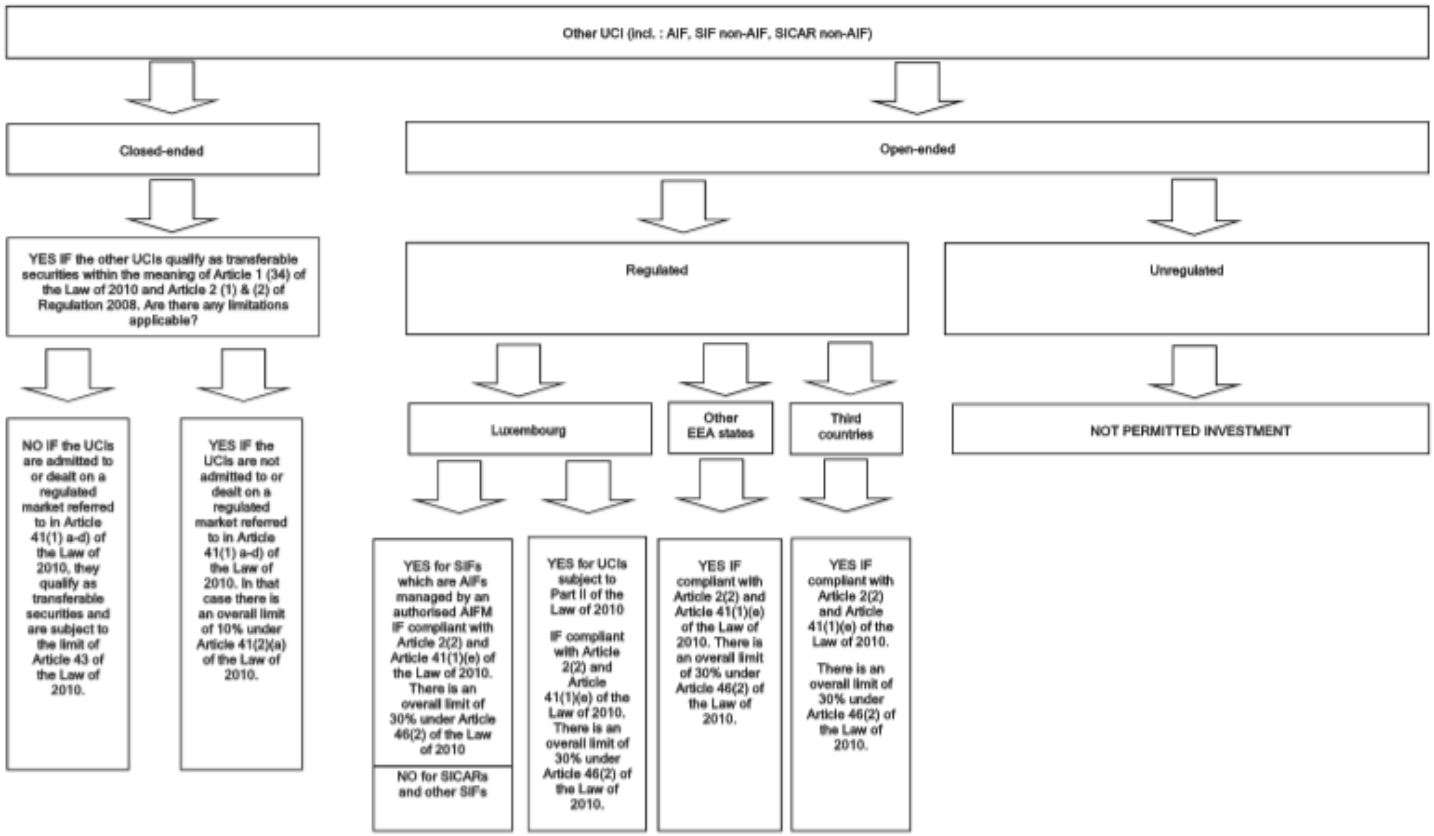
2. Under what conditions are UCITS eligible investment for a UCITS?

Published on 8 December 2015

UCITS are eligible investment for a UCITS if such UCITS do not invest more than 10% in aggregate of their net assets in units of UCI as foreseen under Article 41(1)(e), 4th indent, of the Law of 2010.

3. UCITS may invest under certain conditions in other UCI. What are the steps to be considered in order to determine if the investment in the other UCI is eligible? What eligibility rules apply, if any?

Modified on 24 August 2016



4. Are non-UCITS ETFs eligible investments for UCITS?

Deleted on 5 January 2018

5. Are UCITS master funds eligible investments for a UCITS which is not a feeder fund?

Published on 8 December 2015

Yes, if such UCITS master funds fulfil all the criteria of Article 41(1)(e) of the Law of 2010.

6. Which are the analyses to be conducted to determine the eligibility of transferable securities linked to the performance of other underlying assets (structured financial instruments) within the investment policy of a UCITS?

Published on 8 December 2015

The analysis of the eligibility of structured financial instruments covers several points.

In order to be eligible in terms of Article 41(1)(a) to (d) of the Law of 2010 and to qualify as transferable securities, the securities in question shall first comply with the legal provisions set down in Article 2 of Regulation 2008, completed by point 17 of the CESR guidelines which are attached to Circular CSSF 08/380.

In addition it should be assessed whether these transferable securities contain an embedded derivative within the meaning of Articles 2(3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

Two scenarios are possible:

I. Transferable securities embedding a derivative within the meaning of Articles 2(3) and 10 of Regulation 2008 and of point 23 of the CESR guidelines, respectively.

In this case, the portfolio manager must apply the "look-through" principle and assess the eligibility of the underlying assets in relation to the provisions regarding financial derivative instruments under Article 8 of Regulation 2008.

(A) If the assets underlying the derivative financial instruments qualify as eligible assets according to Article 41 (1) of the Law of 2010 and to Article 8 of Regulation 2008, then the transferable securities in question are eligible as investments of UCITS.

(B) If the assets underlying the derivative financial instruments do not qualify as eligible assets according to Article 41(1) of the Law of 2010 and to Article 8 of Regulation 2008, then the transferable securities in question are not eligible as investments of UCITS pursuant to Article 41(1)(a) to (d) of the Law of 2010.

Nevertheless, if the assets underlying the derivative financial instruments qualify as eligible assets according to Article 41(2)(a) of the Law of 2010, the transferable securities in question are eligible as investments of UCITS pursuant to Article 41(2) of the Law of 2010.

Where a transferable security contains an embedded derivative within the meaning of Articles 2(3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines, the requirements of Article 42 of the Law of 2010 shall apply to this derivative instrument.

II. Transferable securities which do not contain an embedded derivative within the meaning of Articles 2(3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

In principle, the portfolio manager does not need to apply the look-through principle nor assess the eligibility of the underlying assets in relation to the provisions relating to derivative financial instruments set out in Article 8 of Regulation 2008.

That said, a UCITS must always be managed in accordance with the principle of risk-spreading. It is therefore, for example, not acceptable for a UCITS to invest exclusively in different securities which are all linked to the performance of the same underlying asset.

As a consequence, the principle of risk-spreading applies to each transferable security as well as to its underlying assets, independently of whether the security contains or not an embedded instrument within the meaning of Articles 2(3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

It follows that the portfolio manager as well as the persons responsible for the UCITS shall possess the necessary means to comply with the principle of risk-spreading.

7. What kind of investments are eligible in the 10% limit of Article 41(2) of the Law ("trash ratio")?

Published on 8 December 2015

Only investments in transferable securities and money market instruments other than those referred to in Articles 41(1)(a) to (d) and 41(1)(h) of the Law of 2010 are eligible in the trash ratio. As a consequence, no instruments other than transferable securities or money market instruments may be eligible under Article 41(2)(a) of the Law of 2010.

8. Are OTC bond markets in a non-Member State of the European Union eligible markets for a UCITS?

Published on 8 December 2015

Yes, if such OTC bond markets are regulated, operate regularly and are recognised and open to the public according to Article 41(1)(c) of the Law of 2010.

In relation to several OTC bond markets such as, the US OTC Fixed Income Bond Market, the Hong Kong OTC Corporate Bond Market and the China Interbank Bond Market and the OTC bond market organised by the International Capital Market Association (ICMA), the CSSF confirms their eligibility according to Article 41(1)(c) of the Law of 2010.

It is worth recalling that the qualification of a given market as regulated market within the meaning of Article 41(1)(c) of the Law of 2010 is the responsibility of the UCITS.

9. What are the criteria a financial index must comply with in order to qualify as financial index within the meaning of Article 41(1)(g) of the Law of 2010?

Published on 8 December 2015

In order to qualify as a financial index under Article 41(1)(g) of the Law of 2010, the following provisions are applicable:

- Article 9 of Regulation 2008,
- point 22 of the CESR guidelines,
- ESMA ETFs guidelines,
- ESMA ETFs FAQ.

UCITS are invited to fulfil the financial index eligibility table available on the website of the CSSF in order to provide the CSSF with an overview of the financial index and its use.

10. Are investment funds eligible for a UCITS master fund under Article 77(3) of the Law of 2010?

Published on 24 August 2016

Yes, a UCITS master fund can invest in funds or be a fund of funds provided that its target funds are eligible under Article 41(1)(e) of the Law of 2010.

11. Under the conditions disclosed in FAQ 1.3), UCITS may invest in open and closed-ended funds. In this context, how to assess if a fund is open or closed-ended? What are the eligibility rules to be applied?

Published on 24 August 2016

An open-ended fund is a fund with units which are, at the request of holders, repurchased, directly or indirectly, out of this undertaking's assets even if its constitutional documents provide for certain limitations on the exercise of such a right of redemption. A fund, the constitutional documents of which do not provide for the right to investors to request their redemptions qualifies as a closed ended fund.

Investments made in open-ended non UCITS are subject to the global limit of 30% under Article 46(2) of the Law of 2010. In any case, a UCITS must assess risks linked to its investments made in open and closed-ended funds and, such risks must be adequately captured by its risk management process.

Please refer to FAQ 1.3) for eligibility rules applicable to open and closed-ended funds

12. What are the conditions an institution has to fulfil to be an eligible counterparty in the context of OTC derivative transactions under Article 41 (1) (g) of the Law of 2010 or in the context of efficient portfolio management techniques under Article 42 (2) of the Law of 2010?

Published on 24 August 2016

Counterparties to OTC derivative transactions or to efficient portfolio management techniques must be establishments:

- authorised by a financial authority,
- subject to prudential supervision,
- and either be located in the EEA or in a country belonging to the Group of ten or have at least an investment grade rating,
- specialised in such transactions.

If the counterparty does not fulfil any one of the three first criteria, a UCITS has to demonstrate that the prudential rules applicable to such counterparty are equivalent to those laid down in the EU law.

13. Do Loans constitute eligible investments for UCITS?

Modified on 7 August 2020

No.

Loans cannot be considered as assets as referred to in Article 41 (1) and (2) (a) of the Law of 2010 as they do not qualify as:

- money market instruments within the meaning of Article 1 (23) of the Law of 2010 and Articles 3 and 4 of Regulation 2008, further clarified by the CESR guidelines;
- transferable securities within the meaning of Article 1 (34) of the Law of 2010 and Article 2 of the Regulation 2008, further clarified by the CESR guidelines.

UCITS that would be invested in Loans have to disinvest from those positions by 31 December 2020, taking into account the best interests of investors.

In addition, the prospectuses of those UCITS, offering the possibility to invest in Loans, have to be updated, by 31 March 2021 at the latest, in order to no longer provide for the possibility for such investments.

14. Pursuant to Article 41(2) b) of the Law of 2010, a UCITS may hold ancillary liquid assets. What is meant by ancillary liquid assets?

Modified on 20 June 2024

Ancillary liquid assets should be limited to bank deposits at sight, such as cash held in current accounts with a bank accessible at any time, in order to cover current or exceptional payments, or for the time necessary to reinvest in eligible assets provided under Article 41(1) of the Law of 2010

or for a period of time strictly necessary in case of unfavourable market conditions. The holding of such ancillary liquid assets is limited to 20% of the net assets of a UCITS.

The above mentioned 20% limit shall only be temporarily breached for a period of time strictly necessary when, because of exceptionally unfavourable market conditions or other exceptional circumstances, such breach is justified having regard to the interests of the investors.

In the context of Article 77(2) (a) of the Law of 2010 applicable to feeder UCITS, ancillary liquid assets may also include highly liquid assets such as deposits with a credit institution, money market instruments and money market funds. For the avoidance of doubt and by reference to Article 77(2) of the Law of 2010, a feeder UCITS may hold up to 15% of its assets in ancillary liquid assets.

15. Can bank deposits, money market instruments or money market funds be included in the ancillary liquid assets under Article 41(2) b) of the Law of 2010?

Modified on 30 November 2023

No. Bank deposits, money market instruments and money market funds that meet the criteria of Article 41(1) of the Law of 2010 qualify as eligible assets for a UCITS. Other money market instruments may also constitute eligible investments for a UCITS under the trash ratio (please refer to FAQ 1.7)).

For feeder UCITS please refer to FAQ 1.14. above.

16. Is a UCITS authorised to invest in bank deposits, money market instruments or other eligible assets listed under Article 41(1) of the Law of 2010 if it is not clearly foreseen in its investment policy?

Published on 3 November 2021

No. A UCITS should clearly disclose in its investment policy the categories of eligible assets in which it is authorised to invest:

- In order to achieve its investment goals;
- For treasury purposes;
- In case of unfavourable market conditions.

If a UCITS invests in a category of assets that is not foreseen in its investment policy, the provisions of Circular CSSF 02/77 apply.

17. Do margin accounts qualify as bank deposits under Article 41 (1) f) of the Law of 2010 or as ancillary liquid assets under Article 41(2) b) of the Law of 2010?

Published on 3 November 2021

Neither. Initial and variation margins relating to financial derivatives shall be considered as collateral received or posted.

18. Do Special Purpose Acquisition Companies ("SPACs") constitute eligible investments for UCITS?

Published on 17 December 2021

Investments in SPACs by UCITS are not prohibited as SPACs may constitute eligible investments for UCITS, provided they qualify, at any point of their life cycle, as transferable securities within the meaning of Article 1 (34) and Article 41 of the Law of 2010 and Article 2 of the Regulation 2008, further clarified by the CESR guidelines.

However, SPACs may include different kind of risks such as dilution, liquidity, conflicts of interests or the uncertainty as to the identification, evaluation and eligibility of the target company. Moreover, the structure of SPACs can be complex and their characteristics may vary largely from one SPAC to another, meaning that UCITS need to carefully study the structure of each SPAC.

Consequently, before investing into SPACs, UCITS shall perform a detailed risk assessment covering all material risks to which the UCITS will be exposed to as a result of the investment. Given the risk profile of SPACs, such pre-trade assessment shall notably also comply with the provisions of Article 26 (4) of the CSSF Regulation 10-4 requiring management companies, on the basis of reliable and up-to-date information both in quantitative and qualitative terms, to formulate forecasts and perform analyses concerning the investment's contribution to the UCITS' portfolio composition, liquidity and risk and reward profile. With regard more specifically to liquidity risk, the assessment shall ensure that, at all times, the liquidity of the SPAC investments does not compromise the ability of the UCITS to repurchase its units at the request of unit-holders.

Based on the foregoing, the CSSF is of the opinion that a UCITS' investment in SPACs should in principle be limited to a maximum of 10% of a UCITS' NAV, provided that such SPAC investments fulfil all applicable eligibility requirements, are appropriately disclosed in UCITS prospectuses and are captured adequately by the risk management process of the UCITS.

2. Diversification rules

1. Articles 43(3) and 45(1) of the Law of 2010 refer to investments in transferable securities or money market instruments issued or

guaranteed by non EEA country. Does an official list of admitted third countries exist?

Published on 24 August 2016

No, there is no official list. In the context of Article 43 (3) of the Law of 2010, any country may be acceptable. With regard to Article 45 (1) of the Law of 2010, in principle member states of the EEA, OECD, the G20, Singapore and Hong Kong are acceptable. For the other countries, a case-by-case analysis must be conducted by the UCITS and be subject to the approval of the CSSF.

In any case, a UCITS must assess the country risk of its investments made under Articles 43(3) and 45(1) of the Law of 2010 and such country risk must be adequately captured by its risk management process.

2. Pursuant to Article 49(1) of the Law of 2010, a UCITS may derogate from Articles 43, 44, 45, and 46 for a period of 6 months following their date of authorisation. When does this period start?

Published on 24 August 2016

The date of authorisation should be understood as the date when the UCITS is entered by the CSSF on a list. However, in practice, the date of authorisation of a UCITS may differ from its effective launching date. In that case, the derogation period starts from the date of the launch date of the UCITS provided that the latter date has been communicated to the CSSF. In addition, and in line with point 2 of Circular CSSF 12/540 the launch date must occur within eighteen months of the date of the authorisation of the UCITS.

3. What is the "principle of risk-spreading" applicable to the underlying assets of transferable securities that do not embed a derivative as specified under FAQ 1.6)?

Published on 24 August 2016

A UCITS must always be managed in accordance with the principle of risk-spreading. UCITS must ensure that the underlying assets of transferable securities that do not embed a derivative comply with the principle of risk-spreading. It would therefore not be acceptable, if the portfolio of a UCITS would consist exclusively of different structured transferable securities not embedding a derivative, but where the structured transferable securities are all linked to the performance of the same underlying asset.

In this context, the application of a 20% limit of the net assets to each underlying asset of such transferable securities that do not contain an embedded derivative, has to be respected. This limit may be raised up to 35% for a single underlying asset.

4. Does the 20% limit in deposits made with a same body under Article 43(1) of the Law of 2010 apply to ancillary liquid assets?

Modified on 3 November 2021

Yes. As ancillary liquid assets are limited to deposits at sight with banks, the 20% limit applicable to deposits under Article 43(1) of the Law of 2010 applies to ancillary liquid assets.

5. Does the 20% limit in deposits made with a same body under Article 43(1) of the Law of 2010 apply to margin accounts?

Modified on 3 November 2021

No. However, in order to avoid undue exposure to a single body, margin accounts shall be taken into consideration in the 20% global limit applicable to an issuer under Article 43(2) of the Law of 2010. In addition, margin accounts may be subject to the 5%/10% OTC counterparty risk under Article 43(1) of Law of 2010 according to Point III.5 of Circular CSSF 11/512 on risk management, implementing point 1 of Box 27 of ESMA guidelines 10-788, and ESMA opinion 2015/ESMA/880.

3. Delegations to third parties

1. What are the conditions to comply with in case of a delegation by an UCITs of the investment management function?

Published on 24 August 2016

UCITS may delegate the function of investment management according to the requirements of Article 110 of the Law of 2010. The investment manager:

- Must be authorised or registered and subject to prudential supervision.
- If located in a third country, the cooperation between the CSSF and the supervisory authority of the investment fund manager must be ensured.

Investment fund managers located in an EEA or an OECD country and subject to prudential supervision of an authority fulfil in principle the above criteria. Investment fund managers located in another country are in principle acceptable if the CSSF has signed with the relevant supervisory authority, a Memorandum of Understanding covering UCITS.

Finally, the conditions foreseen under point 7.2 of the Circular CSSF 12/546 must be met.

4. Public-interest entities

1. What are public-interest entities ("PIE")?

Published on 24 August 2016

According to Article 2 point 13 of the Audit Directive as amended by Directive 2014/56/EC of 16 April 2014, "public-interest entities" means:

a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;
b) credit institutions as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council, other than those referred to in Article 2 of that Directive;
c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC; or
d) entities designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees

2. Under what conditions a UCITS has to be considered as a PIE?

Published on 24 August 2016

Under the conditions that the units of a UCITS are admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of MiFID are PIEs.

3. What are the main implications for a UCITS considered as a PIE?

Published on 24 August 2016

The Audit Directive and PIE Regulation have following implications for UCITS:

a) Mandatory audit firm rotation is requested after twenty years subject to a public tendering process for the statutory audit after a period of ten years (Article 17 of the PIE Regulation;
b) Provision of non-audit services are only allowed to the (Articles 4 and 5 of the PIE Regulation):
   i. preparation of tax forms;
   ii. identification of public subsidies and tax incentives;
   iii. support regarding tax inspections by tax authorities;
   iv. calculation of direct and indirect tax and deferred tax;
   v. provision of tax advice;
   vi. valuation services, including valuations performed in connection with actuarial services or litigation support services, provided that the following requirements are complied with :
      (a) they have no direct or have immaterial effect, separately or in the aggregate on the audited financial statements;

(b) the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee;

(c) the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor or the audit firm;

c) Audit report will be enlarged mainly with a description of the most significant assessed risks of material misstatement, including assessed risks of material misstatement due to fraud (Article 10 of the PIE Regulation).

However, by way of derogation, UCITS are not required to have an audit committee (point 6(b) of Article 41 of the Audit Directive)

5. Independence requirements set forth by Chapter 4 of the Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 (UCITS V)

1. To which entities are the independence requirements set forth under Chapter 4 of the UCITS V Delegated Regulation applicable?

Published on 6 July 2017

For UCITS with a designated Chapter 15 ManCo:

The independence requirements are applicable between:

- the depositary and
- the Chapter 15 ManCo.

The independence requirements are assessed between the Chapter 15 ManCo and the depositary only.

For UCITS set-up as self-managed SICAVs:

The independence requirements are applicable between:

- the depositary and
- the self-managed SICAV.

2. Which corporate bodies of the entities listed under question 5.1 are affected by the independence requirements set forth under Chapter 4 of the UCITS V Delegated Regulation?

Published on 6 July 2017

The independence requirements affect the "*management body*" (as clarified in the answer to question 5.3 below) and the "*body in charge of the supervisory functions*" (as clarified in the answer to question 5.4 below) when such body exists.

3. Which body has to be considered as the "management body" of an entity set up as a *société anonyme* (S.A.), a *société à responsabilité limitée* (S.à.r.l.) or a *société en commandite par actions* (S.C.A.) established in Luxembourg?

Published on 6 July 2017

The "*management body*" is:

- for a S.A: the board of directors of a monisitic S.A. (*conseil d'administration*, *Verwaltungsrat*) or the management board (*directoire*, *Vorstand*) of a dualistic S.A.,
- for a S.àr.l.: the managers (*gérants*, *Geschäftsführer*) or the board of managers (*conseil de gérance*, *Geschäftsführung*)
- for a S.C.A.): the managers (*gérants*, *Geschäftsführer*) as appointed in accordance with Article 107[1] of the Law of 1915.

When the appointed member of the management body is a legal entity, the independence requirements as clarified in section 5 of the present Q&A shall be assessed at the level of the management body of such legal entity.

4. In case of a dualistic S.A. established in Luxembourg, who is the "body in charge of the supervisory functions"?

Published on 6 July 2017

The "*body in charge of the supervisory functions*" is the supervisory board (*conseil de surveillance*, *Aufsichtsrat*) of a dualistic S.A. established in Luxembourg

5. When the depositary of a UCITS is established as a Luxembourg branch of an entity having its registered office in another EU Member State (and has therefore no legal personality in

1 Article 107, first paragraph of the Law of 1915 notably states that « Management of the company is carried out by one or more managers, who may but need not be unlimited members, designated in accordance with the articles. Where one or more managers are legal entities, they shall not be obliged to appoint a legal representative".

Luxembourg), how are the independence requirements set forth under Chapter 4 of the UCITS V Delegated Regulations assessed between the depositary and the Chapter 15 ManCo (or the self-managed SICAV)?

Published on 6 July 2017

In such case, the independence requirements are assessed at the level of the Chapter 15 ManCo (or the self-managed SICAV) established in Luxembourg with regard to the management body (and, as the case may be, its supervisory board) of the head office of the depositary and the employees of the depositary (both at the level of its head office and of the Luxembourg branch).

6. When the management company of a UCITS is established as a Luxembourg branch of a management company having its registered office in another EU Member State (and has therefore no legal personality in Luxembourg), how are the independence requirements set forth under Chapter 4 of the UCITS V Delegated Regulations assessed between the Luxembourg depositary and the management company?

Published on 6 July 2017

In such case, the independence requirements are assessed at the level of the depositary established in Luxembourg with regard to the management body (and, as the case may be, its supervisory board) of the head office of the management company and the employees of the management company (both at the level of its head office and of the Luxembourg branch).

7. When there is a group link between the Chapter 15 ManCo (or the self-managed SICAV) and the depositary, do the provisions of Article 24 of the UCITS V Delegated Regulation apply in addition to the provisions of Article 21 of the UCITS V Delegated Regulation?

Published on 6 July 2017

Yes.

8. What are the implications of the provisions of Articles 21 and 24 of the UCITS V Delegated Regulation on Luxembourg entities?

Published on 6 July 2017

The implications can be summarised as follows:

- prohibition for the employees and the members of the management body of a Chapter 15 ManCo (or of a self-managed SICAV) to hold a position either as an employee or as a member of the management body of the depositary (Article 21),
- prohibition for the employees and the members of the management body of the depositary to hold a position either as an employee or as a member of the management body of the Chapter 15 ManCo (or of a self-managed SICAV) (Article 21),
- prohibition to have more than one third of the members of the supervisory board of a Chapter 15 ManCo (or of a self-managed SICAV) to hold a position either as a member of the management body, as a member of the supervisory board or as an employee of the depositary) (Article 21),
- prohibition to have more than one third of the members of the supervisory board of a depositary to hold a position either as a member of the management body, as a member of the supervisory board or as an employee of the related Chapter 15 ManCo or self-managed SICAV), where such supervisory boards exist (Article 21), and
- obligation to have a number of independent members (as clarified in the answer to question 9 below) inluded in the relevant management body (as clarified in the answer to question 3 above) or, when applicable, in the supervisory board, in case of a group link between the Chapter 15 ManCo (or the self-managed SICAV) and the depositary (Article 24).

Please refer to the tables hereafter for a schematic overview of the impact of these provisions.

I. Summary table in case the Chapter 15 ManCo (or the self-managed SICAV) and the depositary are both monistic entities:

		Chapter 15 ManCo		
		Board of directors or Board of managers or Managers	Employees	Requirement if group link
Depositary	Board of directors or Board of managers or Managers	NO	NO	Minimum one third of independent members[2]
	Employees	NO	NO[1]	
	Requirement if group link	Minimum one third of independent members [2]		

1 Some exceptions may be granted on a case by case basis for employees who are not involved in any way in the business line "depositary bank".

2. Please refer to the answer to question 9 above for rounding details.

II. Summary table in case the Chapter 15 ManCo (or the self-managed SICAV) is a dualistic entity whereas the depositary is a monistic entity:

		Chapter 15 ManCo			
		Management Board	Supervisory Board	Employees	Requirement if group link
Depositary	Board of directors or Board of managers or Managers	NO	Maximum one third	NO	Minimum one third of independent members[2]
	Employees	NO		NO[1]	
	Requirement if group link		Minimum one third of independent members [2]		

1 Some exceptions may be granted on a case by case basis for employees who are not involved in any way in the business line "depositary bank".

2 Please refer to the answer to question 9 above for rounding details.

III. Summary table in case the Chapter 15 ManCo (or the self-managed SICAV) and the depositary are both dualistic entities:

		Chapter 15 ManCo			
		Management Board	Supervisory Board	Employees	Requirement if group link
Depositary	Management Board	NO	Maximum one third	NO	
	Supervisory Board				Minimum one third of independent members[2]
	Employees	NO		NO[1]	
	Requirement if group link		Minimum one third of independent members[2]		

1 Some exceptions may be granted on a case by case basis for employees who are not involved in any way in the business line "depositary bank".

2. Please refer to the answer to question 9 above for rounding details.

IV. Summary table in case the Chapter 15 ManCo (or the self-managed SICAV) is a monistic entity whereas the depositary is a dualistic entity:

		Chapter 15 ManCo		
		Board of directors or Board of managers or Managers	Employees	Requirement if group link
Depositary	Management Board	NO	NO	
	Supervisory Board	Maximum one third		Minimum one third of independent members[2]
	Employees	NO	NO[1]	
	Requirement if group link	Minimum one third of independent members[2]		

1 Some exceptions may be granted on a case by case basis for employees who are not involved in any way in the business line "depositary bank".

2 Please refer to the answer to question 9 above for rounding details.

9. What is the minimum number of independent members which must be included in the relevant body in order to comply with the requirements of Article 24 of the UCITS V Delegated Regulation?

Published on 6 July 2017

The minimum number of independent members depend on the total number of members within the relevant body (either the management body as clarified in the answer to question 3 above or the supervisory board as clarified in the answer to question 4):

- bodies of three members or less in total must include a minimum of one independent member.
- bodies of four members in total must include a minimum of one independent member.
- bodies of five members in total must include a minimum of two independent members.
- bodies of six members or more in total must include a minimum of two independent members

10. Do individuals previously involved with, or linked to, either the Chapter 15 ManCo, the self-managed SICAV, or the depositary (or any other undertaking within the group to which such entities belong) have to respect a cooling off period in order to be

considered as an independent member in the sense of Article 24 of the UCITS V Delegated Regulation?

Published on 6 July 2017

Yes.

A cooling-off period of 12 months should be respected

11. Following the entry into force of the UCITS V Delegated Regulation, are the provisions of CSSF Circular 12/546 still applicable, notably those relating to solid governance arrangements (section 4.1.) and those relating to the independence of the Chapter 15 ManCo from the depositary?

Published on 6 July 2017

Yes.

6. Impact of the PRIIPs Regulation

The reference to "Luxembourg UCITS" within this section 6 ("Impact of the PRIIPs Regulation") shall be understood as a reference to a Luxembourg UCITS including, as the case may be, any compartment and/or share (classes) thereof.

1. Do manufacturers of Luxembourg UCITS need to draw up a PRIIPs KID?

Modified on 16 December 2022

Yes, manufacturers of Luxembourg UCITS that are made available to retail investors in the EU/EEA (hereinafter referred to as "Luxembourg retail UCITS") need to have in place a PRIIPs KID as of 1 January 2023, following the expiry of the period of exemption provided for in Article 32(1) of the PRIIPs Regulation.

For more details regarding the drawing up and the content of PRIIPs KIDs, reference is made to the relevant provisions of the PRIIPs Regulation and the relevant implementing EU legislation.

Manufacturers of Luxembourg UCITS that are reserved to professional investors may continue to draw up a KIID in compliance with the rules deriving from the UCITS Directive, unless they decide to draw up a PRIIPs KID as set out in the PRIIPs Regulation.

Manufacturers of Luxembourg UCITS that are made available to investors outside of the EU/EEA may continue to draw up a KIID in compliance with the rules deriving from the UCITS Directive, unless they decide to draw up a PRIIPs KID as set out in the PRIIPs Regulation. However, these

manufacturers are advised to liaise with the relevant national competent authorities of the countries where the UCITS is distributed to be informed about the applicable local requirements in terms of key investor information.

For more details on the drawing up and content of KIIDs, please refer to the relevant provisions of the Law of 2010, as well as CSSF's Frequently Asked Questions on the Key Investor Information Document which are published on the CSSF's website.

2. When do Luxembourg UCITS that replace their KIIDs by PRIIPs KIDs need to file such PRIIPs KIDs with the CSSF?

Deleted on29 December 2023

3. Which procedure must be followed in order to file a PRIIPs KID with the CSSF?

Modified on 18 November 2024

The PRIIPs KID for UCITS shall be filed with the CSSF according to Circular CSSF 23/833. Please refer to the user guide detailing the submission procedure for the KID which is published on the CSSF's website.

For more details on the drawing up of KIIDs, please refer to the CSSF's Frequently Asked Questions on the Key Investor Information Document which is also published on the CSSF's website.

4. Does a specific nomenclature/naming convention apply in connection with the filing of a PRIIPs KID with the CSSF?

Modified on 18 November 2024

The PRIIPs KID for UCITS shall be filed with the CSSF according to CSSF Circular 23/833.

For more details, please refer to the user guide detailing the submission procedure for the KID which is published on the CSSF's website.

5. Is it possible to draw up and file a PRIIPs KID instead of a KIID prior to 1 January 2023?

Deleted on 29 December 2023

6. Are manufacturers of Luxembourg UCITS required to draw up a PRIIPs KID if such UCITS is no longer available to retail investors as of 1 January 2023?

Modified on 16 December 2022

Please refer to point (12) of the European Commission Guidelines on the application of the PRIIPs Regulation (2017/C 218/02).

By analogy with the Guidelines, the CSSF is of the opinion that, where a Luxembourg UCITS is no longer made available to retail investors as of 1 January 2023 and changes to the existing commitments are only subject to the contractual terms and conditions agreed before that date, a PRIIPs KID is not required.

7. (i) Are manufacturers of Luxembourg retail UCITS whose offer is closed at 31 December 2022 still required to annually update their KIIDs, even after 1 January 2023?

Published on 16 December 2022

Yes, Luxembourg retail UCITS whose offer is definitely closed (as opposed to situations implying a temporary suspension of the offer (e.g. NAV suspension)) at 31 December 2022, shall annually update their current KIIDs in accordance with the rules under the Law of 2010.

ii) Does a specific yearly timeline apply in connection with the annual update of PRIIPs KID for Luxembourg UCITS?

Published on 29 December 2023

No. Article 15 of Commission Delegated Regulation (EU) 2017/653 requires PRIIP manufacturers to review the information contained in the PRIIPs KID at least every 12 months following the date of the initial publication of the PRIIPs KID without providing for a specific yearly timeline for such annual update.

However, PRIIPs manufacturers are encouraged to annually update the PRIIPs KID for UCITS and to subsequently submit such document to the CSSF within 35 business days after 31 December of each year.

iii) When should the information on past performance be updated and published?

Published on 29 December 2023

The website or the document where past performance is made available (in accordance with Article 8(3) of Delegated Regulation (EU) 2017/653) shall be updated within 35 business days after 31 December of each year. However, in case the PRIIP manufacturer has chosen to include the past performance data in the PRIIPs KID itself, then the latter needs to be updated and submitted to the CSSF within such same period of time.

8. Do the questions and answers of the CSSF's Frequently Asked Questions concerning the Key Investor Information Document (KIID) also apply to Luxembourg UCITS that issue a PRIIPs KID?

Modified on 16 December 2022

As of 1 January 2023, the CSSF's Frequently Asked Questions on the Key Investor Information Document which are published on the CSSF's website continue to apply regarding Luxembourg UCITS that are reserved to professional investors or to investors outside of the EU/EEA, unless the manufacturer thereof has decided to draw up a KID as set out in the PRIIPs Regulation.

With regard to Luxembourg retail UCITS, the CSSF considers that the PRIIPs KID replaces the KIID as part of the UCITS' regulatory fund documentation as of 1 January 2023. However, the CSSF's Frequently Asked Questions on the Key Investor Information Document may still be of relevance to those UCITS with a view to providing guidance on certain items, including those associated with the UCITS authorisation procedure as well as the filing, publication and translation requirements.

The above is without prejudice to anything stated to the contrary in the PRIIPs Regulation.

7. ESMA Opinion on share classes of UCITS

I. Impact of ESMA Opinion on existing share classes and transitional provisions

1. To mitigate negative effects for investors in share classes which were established prior to the issuance of this Opinion and which do not comply with these principles, ESMA is of the view that these share classes should be allowed to continue to operate, subject to their closing for new investments by new and existing investors in accordance with the provisions of point 35 of the Opinion. In case a conversion (free of charge) of non-eligible share classes into other eligible share classes is requested by the UCITS, do the provisions

of CSSF Circular 14/591 concerning the protection of investors in case of a material change apply?

Published on 6 July 2017

Yes.

2. **According to the ESMA Opinion, new investors are only allowed to invest in "non-eligible" share-classes until 30 July 2017; existing investors of such share classes can do so until 30 July 2018. Are investors, who invest newly into these share classes until 30 July 2017, considered as existing investors afterwards and thus able to further invest into these share classes until 30 July 2018?**

Published on 6 July 2017

Yes. These investors will benefit from the transition period for additional investments until 30 July 2018.

II. High-level principle: Common investment objective

3. **According to the ESMA Opinion "overlay share classes" with a derivatives-based hedging arrangement to mitigate ("hedge out") one or more of the risk factors of the common pool of assets are not permissible, with the exception of currency risk hedging. Are all "overlay share classes" that are derivatives-based, with the exception of derivatives-based currency risk hedging, still permissible with the entry into force of the ESMA Opinion on share classes?**

Published on 6 July 2017

No.

4. **Are currency risk hedging arrangements which systematically hedge out part or all of the foreign currency exposure in the common pool of assets into the share class currency compatible with the principle of a common investment objective?**

Published on 6 July 2017

Yes, if they comply with all the requirements set forth in the ESMA Opinion.

III. High-level principle: Non-contagion

5. Does the ESMA Opinion allow a share class providing for a partial hedge (e.g. 50%) of currency risk?

Published on 6 July 2017

Yes. In accordance with point 26. c. of the ESMA Opinion a portion of the net asset value of the share class can be hedged against currency risk.

6. In accordance with point 26. b. and c. of the ESMA Opinion the UCITS management company should, at the level of the share class with a derivative overlay, ensure that the over-hedged positions do not exceed 105% of the net asset value of the share class and that the under-hedged positions do not fall short of 95% of the portion of the net asset value of the share class which is to be hedged against currency risk. If the hedge ratios of 105% / 95% should be breached, do the provisions of CSSF Circular 02/77 apply?

Published on 6 July 2017

No. Following from the requirements of point 26. d. and e. of the ESMA Opinion, the CSSF expects UCITS management companies / investment companies to define and implement monitoring and control processes/procedures for ensuring compliance with the hedge ratios on an ongoing basis.

IV. High-level principle: Pre-determination

7. The ESMA Opinion requires (points 29 and 30) that all the features of a share class should be pre-determined before the share class is set up and that, in share classes with hedging arrangements, this pre-determination should also apply to the currency risk which is to be hedged out systematically. Do these requirements provide for any discretionary elements in the currency risk hedging strategy?

Published on 6 July 2017

No. However, in accordance with the ESMA Opinion, the discretion as to the type of derivative instrument used to hedge the currency risk and the operational implementation are not limited by the pre-determination requirement.

V. High-level principle: Transparency

8. The ESMA Opinion in point 32 b. requires in regard to the share classes with contagion risk that the UCITS management company

should provide a list of share classes in the form of readily available information which should be kept current. Can this requirement be addressed by means of a website publication?

Published on 6 July 2017

Yes, if the prospectus includes a link to the relevant website of the Management Company / UCITS.

9. What information will have to be included in the prospectus about existing share classes with regard to the transparency requirements set forth in the ESMA Opinion?

Published on 6 July 2017

The prospectus should, in accordance with the provisions of point 32 of the ESMA Opinion, provide the details of the types and main characteristics of the share classes such as, among others, fee structure, dividend policy, investor type, currency or currency risk hedging. However, it does not have to provide an exhaustive list of all individual share classes together with all their individual characteristics.

Additional information on share classes issued (such as e.g. list of all the share classes offered to investors or effectively launched classes) should be available to investors either on request and free of charge, or through a reference in the prospectus to an internet website, where such information can be found.

10. Will a notice informing existing investors about the update of the prospectus as a result of the ESMA opinion be required?

Published on 6 July 2017

Yes, if the update of the prospectus includes changes to the rights / interests of the investors.

11. Should investors be informed about the closing of non-eligible share classes for new investments by 30 July 2017 and for additional investments by 30 July 2018?

Published on 6 July 2017

Yes. Investors concerned should be informed in accordance with the provisions set forth in the prospectus.

8. Data transfer

1. What are the conditions to comply with in case of data transfer by a UCI administrator or a depositary to another service provider?

Modified on 30 October 2020

Pursuant to Article 41 (2a) of the amended Law of 5 April 1993 on the financial sector, in case a UCI administrator or a depositary (a credit institution, an investment firm or a professional of the financial sector) is outsourcing services implying a transfer of relevant information to a third party, the UCI administrator or the depositary must ensure that its client, the Board of Directors ("BoD") of the SICAV or of the IFM for common funds, has accepted the outsourcing of the relevant outsourced services, the type of information transmitted in the context of the outsourcing and the country of establishment of the entities that provide the outsourced services.

Any transfer of information related to investors should be disclosed prior to the transfer, by the UCI, respectively the IFM for common funds, to investors through appropriate means, namely the prospectus and the application form combined, if appropriate, with a reference to a website. Existing investors should be informed by the UCI, respectively the IFM for common funds, prior to the transfer of their information, about any update of the fund documents aiming at the aforesaid disclosure by means of a letter, email or any other means of communication provided for by the prospectus.

Due to transparency and confidentiality requirements, the same conditions apply to UCI/IFM acting as UCI administrator.

The aforesaid requirements apply independently from the General Data Protection Regulation (EU) 2016/679, if applicable.

9. Disclosure of the performance fee, the investment manager's fee and the investment advisor's fee to investors of a UCITS?

1. How should a UCITS disclose performance fees to the investors and to whom are performance fees of a UCITS payable?

Modified on 10 March 2020

A performance fee (or performance-related fee) motivates an investment manager to outperform a benchmark or achieve some other performance objective. The investment manager is responsible and accountable for the investments of the UCITS and its related performance. Both the fee model and the investment manager as the recipient of such a performance fee must be disclosed in the prospectus. Should there exist a sharing arrangement of the performance fee with any investment advisor(s) contractually linked to the UCITS, the prospectus shall inform about this arrangement.

2. How should a UCITS specify and disclose the investment manager's fee and the investment advisor's fee, if any, in comparison with other fees paid out of the assets of the UCITS?

Modified on 10 March 2020

In light of point 6 of Schedule A of Annex I of the Law of 17 December 2010 on undertakings for collective investment ("the Law"), expenses or fees shall be disclosed in the prospectus. This disclosure should distinguish between those to be paid by the unit-holders, and those to be paid out of the assets of the UCITS. Where a service fee is directly paid out of the assets of the UCITS to the investment manager(s), and possibly to any investment advisor(s) contractually linked to the UCITS, the method of calculation or the rate of the fee to each recipient must be disclosed in the prospectus.

For the sake of transparency and to allow investors to make an informed judgement about the investment proposed, as required under Article 151 (1) of the Law, the investment manager's fee and/or the investment advisor's fee shall only pay for investment management, respectively investment advice. As a general rule, the investment advisor's fee is expected to be at a lower level than the investment manager's fee.

When other expenses or fees for activities beyond the direct scope of investment management or advice are payable out of the assets of the UCITS to the investment manager(s) or investment advisor(s), such expenses or fees must be disclosed separately from investment manager's fee respectively investment advisor's fee, in a way that clearly informs investors about the nature of such expenses or fees.

In cases where the option of an "all-in" fee is proposed, which implies that only one compensation amount is paid out of the assets of the UCITS to a recipient (commonly the management company) who will afterwards pay the other service providers to the UCITS, the prospectus must clearly state the scope and nature of such "all-in" fee. Ideally, each contractual recipient of this all-in fee should be specified. This provides clarity to investors concerning compensation, fees and expenses in order to allow comparison across UCITS and facilitate investment choice.

10. Application of MiFID to Luxembourg IFMs

1. Do IFMs and UCIs qualify as clients under MiFID?

Published on 10 June 2021

Yes. UCIs and their investment fund manager qualify as clients under Article 1 (3) of the Law of 1993 / Article 4 (1) (9) of MiFID.

2. How should the exemption from MiFID for UCIs and their IFM foreseen under Article 2(1) (i) MiFID be understood?

Published on 10 June 2021

The management of collective funds by IFMs is not a service under MiFID. IFMs and their UCIs are therefore exempted from the scope of MiFID under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID when performing the functions included in the collective portfolio management themselves. However, the exemption does not cover the functions of collective portfolio management:

- undertaken by an authorised IFM under a delegation arrangement (the "delegate IFM") from another authorised IFM or,
- delegated by an authorised IFM to a third party (the "third-party delegate").

3. When does the service rendered by third parties to IFMs fall within the scope of MiFID?

Published on 10 June 2021

When an IFM does not perform all the functions of the collective portfolio management itself or uses the service of a third-party delegate, the exemption foreseen under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID does not apply to such third-party delegate.
In such a circumstance, the IFM gives a mandate to a third-party delegate to execute on its behalf the relevant activity. Thus, the IFM becomes a client of this third-party delegate and the third-party delegate may be subject to the MiFID rules if:

a) the service rendered qualifies as an investment service or an activity under Annex II of the Law of 1993 / Annex I of MiFID; and,
b) the service relates to transactions on financial instruments as defined under section B of Annex II of the Law of 1993 / section C Annex I of MiFID; and,
c) the service is rendered by a third party established in the EU or is considered to be rendered in Luxembourg by a third party established outside of the EU as further clarified by the CSSF in Part III of Circular CSSF 19/716.

4. Do MiFID rules apply to the performance of functions included in the collective portfolio management by another delegate IFM?

Published on 10 June 2021

Where an IFM delegates the performance of one or several functions included in the collective portfolio management to another IFM, the exemption foreseen under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID does not apply to the delegate IFM.

In such case, the delegate IFM must, in principle, depending on the tasks performed, be authorised to provide discretionary portfolio management and non-core services foreseen under Article 101 (3) of the Law of 2010 or under Article 5 (4) of the Law of 2013 such as investment advice, administration of units of UCIs or, for authorised AIFM, reception and transmission of orders ("RTO").

Those delegate IFMs are not subject to the full scope of MiFID rules, only Articles 1-1, 37-1 and 37-3 of the Law of 1993 / Articles 15, 16, 24 and 25 of MiFID, apply. The delegate IFMs are not authorised to provide other MiFID services or activities than those covered under Article 101 (3) of the Law of 2010 or under Article 5 (4) of the Law of 2013.

5. Do MiFID rules apply to the marketing of funds?

Modified on 3 April 2024

Marketing of funds is part of the functions included in the collective portfolio management. Consequently, if the authorisation of an IFM includes the marketing function, the IFM can perform the marketing for the funds under its management ("direct marketing").

If, in relation to a fund under its management, the IFM does not perform the marketing function itself, the exemption foreseen under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID does not apply but MiFID rules may apply to the entity undertaking the marketing function depending on where and to whom the fund is distributed, and on the services provided, in which case and, to the extent such entity is another IFM established in Luxembourg, an additional authorisation under Article 101(3) of the Law of 2010 or under Article 5(4) of the Law of 2013 (as applicable) may be required for such other IFM.

No such additional authorisation is required if such other IFM only brings together a potential investor with an IFM and / or its investment fund without however providing the investment service of reception and transmission of orders. It is however the responsibility of such other IFM to assess to what extent the activities undertaken do or not qualify as pre-marketing as defined in Article 1(58-1) of the Law of 2013 / Article 4(1) (aea) of the AIFMD or marketing of funds as further clarified under question 7 hereunder.

6. Do MiFID rules apply when an IFM delegates the marketing to another IFM?

Published on 10 June 2021

As explained under question 5, if an IFM does not operate the activity of marketing by itself, the exemption foreseen under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID does not apply.

Any Luxembourg IFM that markets funds that it does not directly manage on behalf of another IFM, acts as an intermediary as any investment firm covered by MIFID and must therefore be authorised under Article 101 (3) of the Law of 2010 or under Article 5 (4) of the Law of 2013, depending on the type of fund and services offered, namely discretionary portfolio management and, in addition, at least, safekeeping and administration of UCIs or, for authorised AIFMs, RTO relating to UCIs.

In such case, Articles 1-1, 37-1 and 37-3 of the Law of 1993 / Articles 15, 16, 24 and 25 of MiFID, will be applicable to the Luxembourg IFM.

EU IFMs marketing on behalf of another IFM, in Luxembourg, funds that they do not manage directly, must be authorised under Article 6 (3) of the UCITS Directive or under Article 6 (4) of the AIFM Directive.

7. Which MiFID investment services may be considered as marketing of funds?

Published on 10 June 2021

The marketing of funds is not an investment service "per se" under MiFID as it is not part of the list of services and activities included in sections A and C Annex II of the Law of 1993 / sections A and B of Annex I of MiFID. However, the following MiFID services may be used for the distribution of funds:

- Reception and transmission of orders relating to UCIs;
- Execution of orders on behalf of clients;
- Dealing on own account;
- Portfolio management;
- Investment advice;
- Underwriting and/or placing of UCIs on a firm commitment basis;
- Placing of UCIs without a firm commitment basis.

8. Is investment advice included in the activity of collective portfolio management?

Published on 10 June 2021

No. Investment advice is not listed in the functions included in the activity of collective portfolio management under Annex II of the Law of 2010 or Annex I of the Law of 2013.

9. Do MiFID rules apply to investment advisors when they provide investment advice to an IFM?

Published on 10 June 2021

Yes. As per Article 9 of MiFID Delegated Regulation 2017/565, investment advice given to an IFM that enable to take an investment decision, qualify as personal recommendations issued to a client under MiFID as the recommendations are not issued exclusively to the public.

Consequently, third parties that provide investment advice relating to financial instruments as defined under section B of Annex II of the Law of 1993 / section C Annex I of MiFID, to UCI/IFM, to an IFM, are in principle subject to MiFID rules.

10. Are IFMs authorised to provide investment advice to another IFM?

Published on 10 June 2021

No, except if the IFM is also authorised under Article 101 (3) b) of the Law of 2010 or under Article 5 (4) (b) (i) of the Law of 2013, to provide investment advice.

11. Which MiFID exemptions may apply to third parties providing investment services to IFM?

Published on 10 June 2021

The third parties providing investment services to IFMs may benefit from the following exemptions:

a) Specific exemptions under the Law of 1993 / MiFID:
   - Intragroup service exemption under Article 1-1 (2) (b) and (c) of the Law of 1993 / Article 2 (1) (b) of MiFID.
   - Service complementary to their professional activities as foreseen under Article 1-1 (2) (d) of the Law of 1993 / Article 2 (1) (c) of MiFID.
   - Investment advice not specifically remunerated rendered in the course of providing another professional activity not covered by MiFID under Article 1-1 (2) (l) of the Law of 1993 / Article 2 (1) (k) of MiFID.

b) Partial exemption from MiFID rules:
   - Authorised EU IFM rendering discretionary portfolio management and non-core services under Article 101 (3) of the Law of 2010 / Article 5 (4) of the Law of 2013 are subject to Articles 1-1, 37-1 and 37-3 of the Law of 1993 / Articles 15, 16, 24 and 25 of MiFID.

In any case, the third parties must be able to demonstrate that they fall within the scope of an exemption, should they provide services without an authorisation under the MIFID applicable framework.

11. Treatment of breaches of the UCITS global exposure limit

1. Do passive investment breaches (i.e. a breach beyond the control of the UCITS) by a UCITS of the global exposure limit of Article 42(3) of the Law of 2010 (and more generally of investment restrictions applicable to UCI) have to be notified to the CSSF?

Published on 17 August 2021

No.

2. **Can breaches of the VaR limit (either the maximum limit laid down in regulation (20% for absolute VaR or 200% for relative VaR as the case may be) or any other more restrictive internal limit set below the above regulatory thresholds, as laid down in the sales prospectus) by UCITS as a result of the increase of volatility in financial markets (in the absence of any new positions increasing the risk of the portfolio) be considered as passive breaches?**

Published on 17 August 2021

Yes.

3. **What are the expectations of the CSSF in case of a passive breach (i.e. beyond the control of the UCITS, e.g. increase of volatility in the financial markets) of the regulatory VaR limit or the internal VaR limit laid down in the prospectus?**

Published on 17 August 2021

Investment fund managers should take appropriate steps to meet the limit within a reasonable time period, thereby taking due account of the prevailing market conditions and of the best interests of investors. For that purpose, they have to closely monitor the situation of the UCITS as well as the defined remediation plan.

Upon occurrence of a passive breach, any additional risk exposure taken by the UCITS increasing the overall level of risk of the portfolio (i.e. VaR usage increasing) should be viewed as an active investment breach.

The passive breach should however not preclude the UCITS from continuing to manage the fund (for example, concluding investments following subscriptions in the fund). If a new position does not increase the level of risk of the UCITS (i.e. VaR consumption is not increasing), it should not be viewed as an active breach.

4. **What information do UCITS have to communicate to the CSSF (opc.prud.sp@cssf.lu) in relation to an active breach of the VaR limit (whether the maximum limit laid down in regulation – 20% for absolute VaR or 200% for relative VaR - or the internal limit, below the above regulatory thresholds, as laid down in the sales prospectus)?**

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The notification to the CSSF should include at least the following information:

- the legal name of the notifying person/entity and the corresponding CSSF identifier of the entity;
- the legal name of the fund and the sub-fund, and the corresponding CSSF code of the fund and the sub-fund;
- the VaR computation method (absolute VaR or relative VaR);
- the internal VaR limit (if prospectus mentioned a limit below the regulatory limit);
- the VaR limit consumption;
- the date when the active breach occurred and the date when the breach ended;
- the reason(s) of the breach (i.e. new position, redemptions which miss to be managed by the fund manager, etc…);

If needed, the CSSF may ask additional explanations.

For these notifications investment fund managers do not have to use the standard notification form in accordance with Circular CSSF 02/77 template.