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The CSSF has published the 9th update of its FAQ concerning the application of the Law of 2013 (“AIFM Law”) in particular giving guidance on reverse solicitation and marketing

The *Commission de Surveillance du Secteur Financier* (“**CSSF**”) has on 10 August 2015 published a revised version of its frequently asked questions document (“**CSSF FAQ**”), which *inter alia* includes useful guidance on reverse solicitation and marketing in respect of alternative investment funds (“**AIFs**”) in Luxembourg.

▪ Reverse solicitation

The CSSF has clarified its interpretation of the concept of reverse solicitation. For the CSSF, reverse solicitation consists in providing information regarding AIFs and making units or shares of AIFs available for purchase following an initiative of the investor without any solicitation made by the AIF or its alternative investment fund manager (“**AIFM**”).

The cumulative components of reverse solicitation are twofold:

- the investor (or its agent) has approached the AIFM or the AIF on its own initiative with the intention of investing in (or receiving information regarding) AIF(s) managed by such AIFM;
- neither the AIFM, nor the AIF (nor any intermediary acting on their behalf) has solicited the investor to invest in the relevant AIF.

The CSSF places the burden of proof of the aforementioned components on the AIFM. The AIFM can demonstrate by means of a written confirmation from the investor that the investor has decided on its own initiative to invest in the relevant AIF. This guidance is both helpful and useful and will assist investors and managers alike.

▪ Marketing

The CSSF defines marketing within the meaning of the AIFM Law as taking place when the AIF, the AIFM or an intermediary on their behalf seeks to raise capital by actively making units or shares of an AIF available for firm purchase by a potential investor.

- Draft documents

The CSSF has confirmed its position that draft documents provided to prospective investors does not constitute a marketing activity so long as they cannot be used by prospective investors to formally subscribe or commit. Furthermore, the CSSF FAQ clarifies that the AIFM is permitted to present to prospective investors documents in relation to the AIF it manages prior to informing the CSSF in accordance with Articles 29, 31, 37 or 45 of the Law of 2013, again provided that investors may not yet formally invest or commit in the AIF. This clarification will be useful for many private funds where the fund documentation is often negotiated with investors.

- Luxembourg-based intermediaries

Marketing in Luxembourg can be performed by Luxembourg-based intermediaries (eg. management companies, credit institutions or professionals of the financial sector authorised under the Law of 1993) provided that they are duly authorised to perform such services.

- Distance marketing

The CSSF considers that distance marketing is any marketing activity which is carried out by any means of communication (eg. telephone, website) which does not imply the simultaneous physical presence in Luxembourg of representatives of (i) the AIF, the AIFM or its intermediary and (ii) the investor.

Distance marketing will qualify as marketing in Luxembourg when the investors are domiciled or have their registered office in Luxembourg and the relevant materials can be used to subscribe for shares or units of the AIF.

- Discretionary mandates

The CSSF has confirmed that no marketing activity takes place in the context of a discretionary mandate for the management of individual investment portfolios where it is at the initiative of the investment manager. This is likewise also the case where a proposal to invest in an AIF in the context of an investment advisory agreement is made at the initiative of an investment advisor.

Furthermore, investments made in target AIFs in the context of the collective portfolio management of an undertaking for collective investment (“UCI”) or an AIF by the UCI/AIF or its management company, AIFM, portfolio manager or other agent are not to be considered as marketing for the purposes of the AIFM Law.

This is very useful guidance for the Luxembourg wealth management as well as fund of funds sectors.

- Secondary trading

Marketing does not include the secondary trading of units or shares of an AIF except where there is an indirect offering or placement through one or more intermediaries acting at the initiative or on behalf of, the AIFM or the AIF.

- **Further guidance**

The CSSF FAQ also includes *inter alia* guidance from the CSSF on the following points:

- The status of a credit institution or an investment firm under the Law of 1993 and its compatibility with an AIFM status under the AIFM Law;
- The AIFs for which professional depositaries of assets other than financial instruments (“**PDAOFI**”) can act as depositary;
- The reporting requirements to the CSSF by a non-EU AIFM pursuant to Article 24(1), (2) & (4) of the AIFMD; and
- The definition of value to be taken into consideration with regard to the initial capital and own funds requirements applicable for AIFMs.

The CSSF FAQ is available for download [here](#).

A compare version of the changes between the 9th update and the previous version of the CSSF FAQ is available for download [here](#).

We remain at your disposal for any questions.

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