

Luxembourg newsflash

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The CSSF has published regulation N° 15-03 outlining the modalities of application of Article 46 of the AIFM Law concerning the marketing of foreign AIFs to retail investors in Luxembourg

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The *Commission de Surveillance du Secteur Financier* (“**CSSF**”) has on 27 November 2015 published regulation N° 15-03 (“**Regulation**”) outlining the modalities of application of Article 46 of the Law of 12 July 2013 regarding alternative investment fund managers (“**AIFM Law**”).

Context

Article 46 relates to alternative investment fund managers (“**AIFMs**”) who wish to market foreign open-ended alternative investment funds (“**AIFs**”) to retail investors in Luxembourg. It should be noted that the Regulation does not apply to the marketing of foreign AIFs to professional investors and well-informed investors. It permits authorised AIFMs established in Luxembourg, in another EU Member State or in a third country to market foreign AIFs they manage to retail investors in Luxembourg after receiving approval from the CSSF.

With regard to AIFMs established in another Member State of the EU or in a third country, the following must be complied with:

- Such AIFs must be subject in their state of origin to regulation which offers investors at least equivalent levels of protection as those foreseen by the Luxembourg legislation concerning the marketing to retail investors. In such cases, the co-operation between the CSSF and the supervisory authority of the AIF has to be assured.

Application

The Regulation is aimed at the following AIFs:

- Foreign-law AIFs managed by an authorised AIFM established in Luxembourg;
- Foreign-law AIFs managed by an authorised AIFM established in a Member State of the EU;
- Foreign-law AIFs managed by an authorised AIFM established in a third country (not yet applicable in the absence of the third country passport).

It should be noted that ‘well-informed’ investors as defined in the Law of 13 February 2007 on specialised investment funds and the Law of 15 June 2004 on companies investing in risk capital (*ie.* an institutional investor, a professional investor or other investor as defined in the aforementioned laws), eligible investors under the

EuVECA, EuSEF and ELTIF regimes are not within the scope of the Regulation.

Authorisation procedure

The CSSF informs that each foreign AIF intending to market in Luxembourg to retail investors must have an authorisation accorded by the CSSF prior to commencing its marketing activities.

Furthermore such AIFs must have already completed the notification procedure required for the marketing to professional investors as provided for in the relevant dispositions of the AIFM Law and the AIFMD.

The CSSF has indicated the compulsory documentation it requires as part of the application for authorisation to market in Luxembourg. This is in addition to the information required for marketing to professional investors. The CSSF also expressly reserves the right to require more documentation if it deems necessary.

Conditions

In order for a foreign AIF to be eligible to market to retail investors in Luxembourg it must respect the following conditions:

- Determine the periodic frequency on which emission and redemption of units or shares of the foreign AIF is calculated, this should be at least once per month;
- Ensure that the risks are sufficiently spread.

On a general note, the CSSF gives guidance in the Regulation on the criteria it considers necessary to ensure that the spreading of risk is sufficient.

The CSSF reserves the right to allow derogations to the conditions following justification by the foreign AIF of its investment policy.

Practical considerations

The foreign AIF being marketed to retail investors in Luxembourg must appoint a credit institution as paying agent and ensure that the information relating to the foreign AIF is made available to investors in one of the following languages: French, German, English or Luxembourgish. The use of a website is permitted.

Finally, the Law of 8 April 2011 concerning the consumer code as amended, must be complied with. It should also be noted that once the marketing of the foreign AIF ceases, the CSSF should be informed accordingly.

The Regulation will come into effect on the first day of the month following its publication in the *Mémorial*.

Conclusion

The Regulation is a welcome clarification to the functioning of Article 46 of the AIFM Law and provides a clear regulatory framework in which foreign AIFs may now be marketed to retail investors in Luxembourg.

The Regulation is available (only in the French language) [for download here](#).

Please do not hesitate to contact us should you require further information.

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.