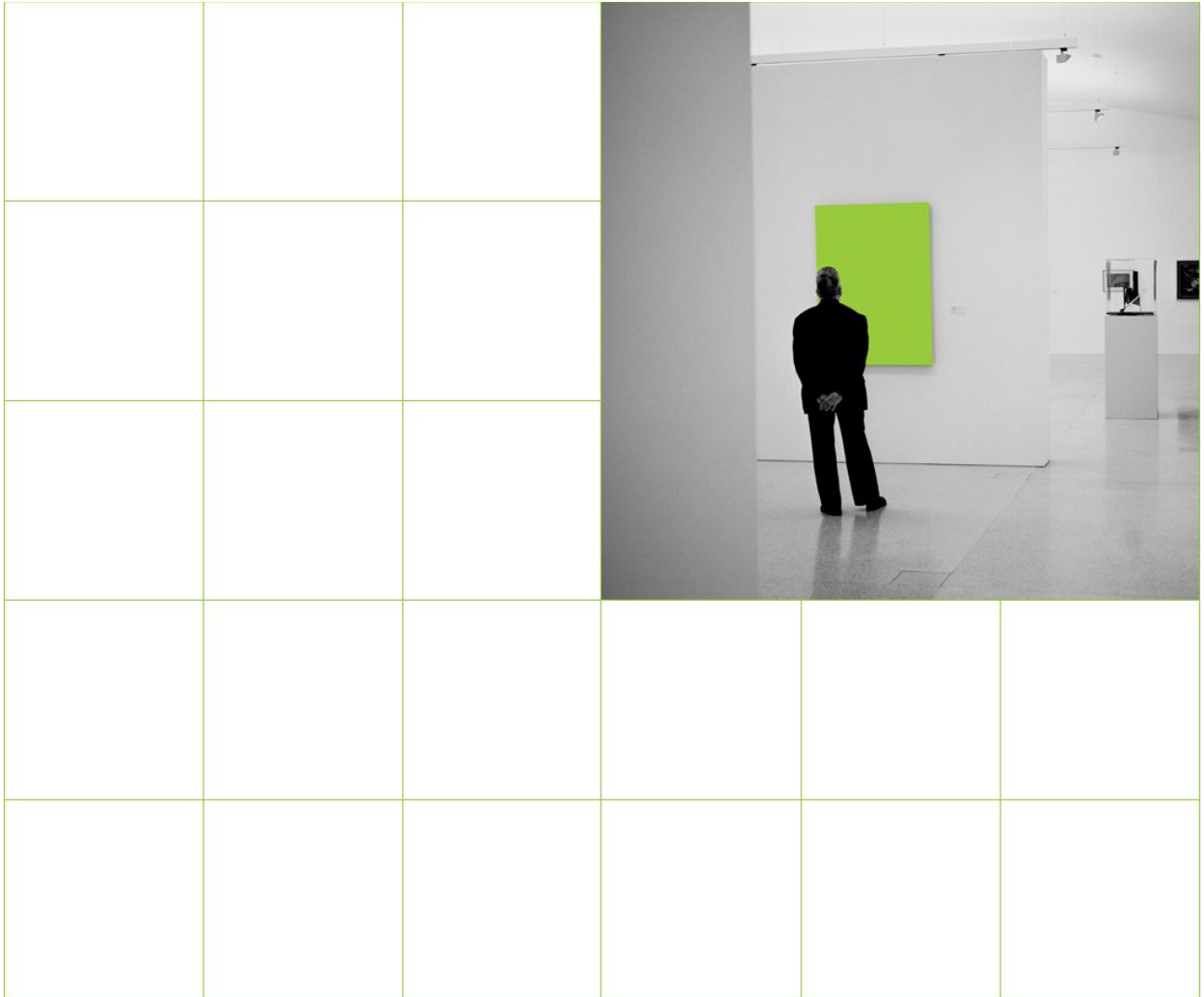




CSSF Regulation No. 15-03

2 December 2015



CSSF Regulation No. 15-03

COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

Unofficial translation of the French original

CSSF Regulation No. 15-03 adopting the implementing provisions of Article 46 of the Law of 12 July 2013 relating to Alternative Investment Fund Managers regarding the marketing of foreign law alternative investment funds to retail investors in Luxembourg

The Directorate of the Commission for the Supervision of the Financial Sector,

Having regard to Article 108*bis* of the Constitution;

Having regard to the Law of 23 December 1998 establishing the Commission for the Supervision of the Financial Sector and notably its Article 9, paragraph (2);

Having regard to the Law of 12 July 2013 relating to alternative investment fund managers and notably its Article 46;

Adopts:

Article 1

Definitions

In addition to the definitions under Article 1 of the Law of 12 July 2013 on Alternative Investment Fund Managers which are applicable for the purposes of this Regulation, the term "foreign law alternative investment funds (AIFs)" means alternative investment funds (AIFs) within the meaning of Directive 2011/61/EU on Alternative Investment Fund Managers established in a Member State of the European Union other than Luxembourg or in a third country.

Article 2

Object

This Regulation adopts the implementing provisions of Article 46 of the Law of 12 July 2013 on alternative investment fund managers by defining the procedure and the conditions which apply to the marketing of foreign law AIFs to retail investors in Luxembourg.

Article 3

Scope

(1) Without prejudice to the provisions of paragraph (2), this Regulation applies to the marketing to retail investors in Luxembourg of:

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

(2) This Regulation does not refer to the marketing of foreign law AIFs which takes place in Luxembourg to:

- well-informed investors within the meaning of Article 2, paragraph (1), of the Law of 13 February 2007 on specialised investment funds and of Article 2 respectively of the Law of 15 June 2004 on investment companies with risk capital (SICARs);
- eligible investors under Regulation (EU) No. 345/2013 on European venture capital funds;
- eligible investors under Regulation (EU) No. 346/2013 on European social entrepreneurship funds;
- eligible investors under Regulation (EU) No. 2015/760 on European long-term investment funds.

Article 4

Marketing authorisation by the CSSF

(1) All foreign law AIFs, prior to the marketing of their units or shares to retail investors in Luxembourg, must obtain authorisation for such marketing which is granted by the CSSF in accordance with the provisions of this Regulation.

(2) Foreign law AIFs which are authorised to market their units or shares under this Regulation are registered by the CSSF on the "list of foreign law AIFs admitted for marketing to retail investors in Luxembourg pursuant to Article 46 of the Law of 12 July 2013 on alternative investment fund managers".

(3) The authorisation for marketing under this Regulation may not be granted before completion of the notification procedure required for marketing to professional investors, as provided for in the relevant provisions of the Law of 12 July 2013 on alternative investment fund managers and of the Directive 2011/61/EU on Alternative Investment Fund Managers respectively.

Without prejudice to the documents and information to be provided to the CSSF in the context of the notification procedure required for marketing to professional investors referred to in sub-paragraph 1, the application for marketing authorisation to retail investors in Luxembourg must also contain the additional elements provided for in Article 5 of this Regulation.

Article 5

Application for marketing authorisation

(1) The application for marketing authorisation to be presented to the CSSF under this Regulation must contain the following documents and information:

- a) an attestation from the supervisory authorities of the home Member State of the foreign law AIF certifying that it is authorised and subject to ongoing supervision in its home Member State;
- b) the addendum to the prospectus/offering document of the foreign law AIF containing specific information for marketing in Luxembourg;
- c) the last annual report of the foreign law AIF;
- d) the biographies of the directors of the foreign law AIF;
- e) the draft agreement to be concluded between the foreign law AIF and the paying agent in Luxembourg;
- f) if the foreign law AIF is a feeder AIF, information on the master AIF including details of the place where the master AIF is established, the constitutive documents of the master AIF as well as its prospectus/offering document.

The addendum referred to in point b) which will form part of the prospectus/offering document of the foreign law AIF must contain all information useful for investors in Luxembourg, so that they can invest in full knowledge of the facts. The information to be included in this addendum is as follows:

- appropriate information on the risks inherent in the investment policy of the foreign law AIF;
- information on the possible fees and charges which may be borne by the investors;
- the name, address and functions of the paying agent in Luxembourg to which investors may apply to subscribe, redeem and convert their units or shares;
- the place where the latest prospectus/offering document of the foreign law AIF, its constitutive documents and latest annual reports are made available;
- details on the method of publication of the net asset value of the foreign law AIF;
- the name of the Luxembourg newspaper in which notices to investors are published.

(2) In addition to the documents and information mentioned under paragraph (1), the CSSF may request any additional documents and information that it deems necessary for its examination of the authorisation application.

Article 6

Conditions for granting the marketing authorisation

(1) In addition to complying with the provisions of Article 46 of the Law of 12 July 2013 on alternative investment funds, the CSSF will only grant authorisation to a foreign law AIF to market its units or shares to retail investors in Luxembourg on condition that the AIF concerned is managed by a sole AIFM, which may be either an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, or an AIFM authorised under Chapter II of the Directive 2011/61/EU and established in another Member State or in a third country, subject to the application of Article 66, paragraph (3) of the said Directive.

The management of the foreign law AIF in accordance with all the provisions under Directive 2011/61/EU on Alternative Investment Fund Managers must be permanently ensured.

(2) Where the foreign law AIF is a feeder AIF, the marketing authorisation referred to in paragraph (1) is also conditional upon the master AIF being subject to ongoing supervision in its home Member State by a competent authority provided for by law for the purpose of ensuring 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 granting of the marketing authorisation implies the obligation for the foreign law AIF to inform the CSSF of any substantial amendments with regard to the documents and information transmitted in accordance with Article 5 of this Regulation on which the CSSF based the granting of the authorisation.

Article 7

Types of foreign law AIFs which may be admitted for marketing to retail investors in Luxembourg

(1) Subject to the application of paragraph (2) of this Article, for a foreign law AIF to be eligible for marketing to retail investors in Luxembourg, they must comply with the following rules:

a) The frequency at which the issue and redemption prices of units or shares of the foreign law AIF must be determined:

The foreign law AIF must determine the issue and redemption prices of its units or shares at sufficiently close and fixed intervals, but at least once a month.

b) Risk spreading:

The foreign law AIF must demonstrate sufficient risk spreading.

In general, the CSSF considers that the principle of sufficient risk spreading is respected if the investment restrictions of a foreign law AIF comply with the following guidelines:

A. Securities

1. The foreign law AIF may not invest more than 10% of its assets in securities that are not listed on a stock exchange or not dealt in on another market that is regulated, operates regularly and is open to the public.

2. The foreign law AIF may not acquire more than 10% of securities of the same kind issued by the same issuer.

3. The foreign law AIF may not invest more than 20% of its assets in securities of the same issuer.

The restrictions set out in points 1, 2 and 3 above do not apply to:

- investments in securities issued or guaranteed by a Member State of the OECD or by its local authorities or by supranational institutions and organisations of a community, regional or worldwide nature;

- investments in target UCIs subject to risk-spreading requirements at least comparable to those provided for UCIs governed by Part II of the Law of 17 December 2010 on undertakings for collective investment.

B. Borrowings

The foreign law AIF may not borrow an amount exceeding 25% of its net assets, without prejudice to point D. of this paragraph.

C. Use of financial derivative instruments

When using financial derivative instruments, the foreign law AIF must ensure an appropriate risk spreading at the level of the underlying assets.

Furthermore, the foreign law AIF concerned must be subject to risk spreading and investment restriction rules that are comparable to those provided for UCIs governed by Part II of the Law of 17 December 2010 on undertakings for collective investment which pursue so-called alternative investment strategies.

D. Real estate assets

To ensure minimal risk spreading, the foreign law AIF may not invest more than 20% of its assets in one single property.

Furthermore, the aggregate amount of the foreign law AIF's borrowings may not exceed on average 50% of the assessed value of all the properties.

(2) The CSSF may grant exemptions to the rules laid down in paragraph (1) on the basis of adequate justification according to the specific investment policy of any given foreign law AIF.

Article 8

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

(1) A foreign law AIF which is authorised to market its units or shares to retail investors in Luxembourg pursuant to this Regulation must appoint a credit institution so that payments to investors as well as redemptions and subscriptions of units or shares are ensured in Luxembourg.

(2) A foreign law AIF which markets its units or shares to retail investors in Luxembourg must also take appropriate measures to ensure that the information and documents for which it is responsible are available to investors in Luxembourg.

The information and documents referred to in the preceding sub-paragraph must be provided to investors in Luxembourg in either French, German, English or Luxembourgish. The information in question may also be provided via a website.

Article 9

Marketing rules in force in Luxembourg

Without prejudice to Article 8 of this Regulation, the provisions laid down in the following laws must be observed in the event of marketing of securities to investors in Luxembourg:

- The amended Law of 8 April 2011 introducing a consumer code.

Article 10

Termination of marketing

The CSSF must be informed when a foreign law AIF decides to cease marketing 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. The AIF in question will consequently be removed from the list referred to in Article 4, paragraph (2) of this Regulation.

Article 11

Publication

This Regulation will be published in the *Mémorial* as well as on the website of the CSSF.

The Regulation will enter into force on the first day of the month after its publication in the *Mémorial*.

Foreign law UCIs other than UCITS which have been authorised for marketing to retail investors in Luxembourg are considered by operation of law as authorised under this Regulation at the moment of its entry into force.

Luxembourg, 26 November 2015

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