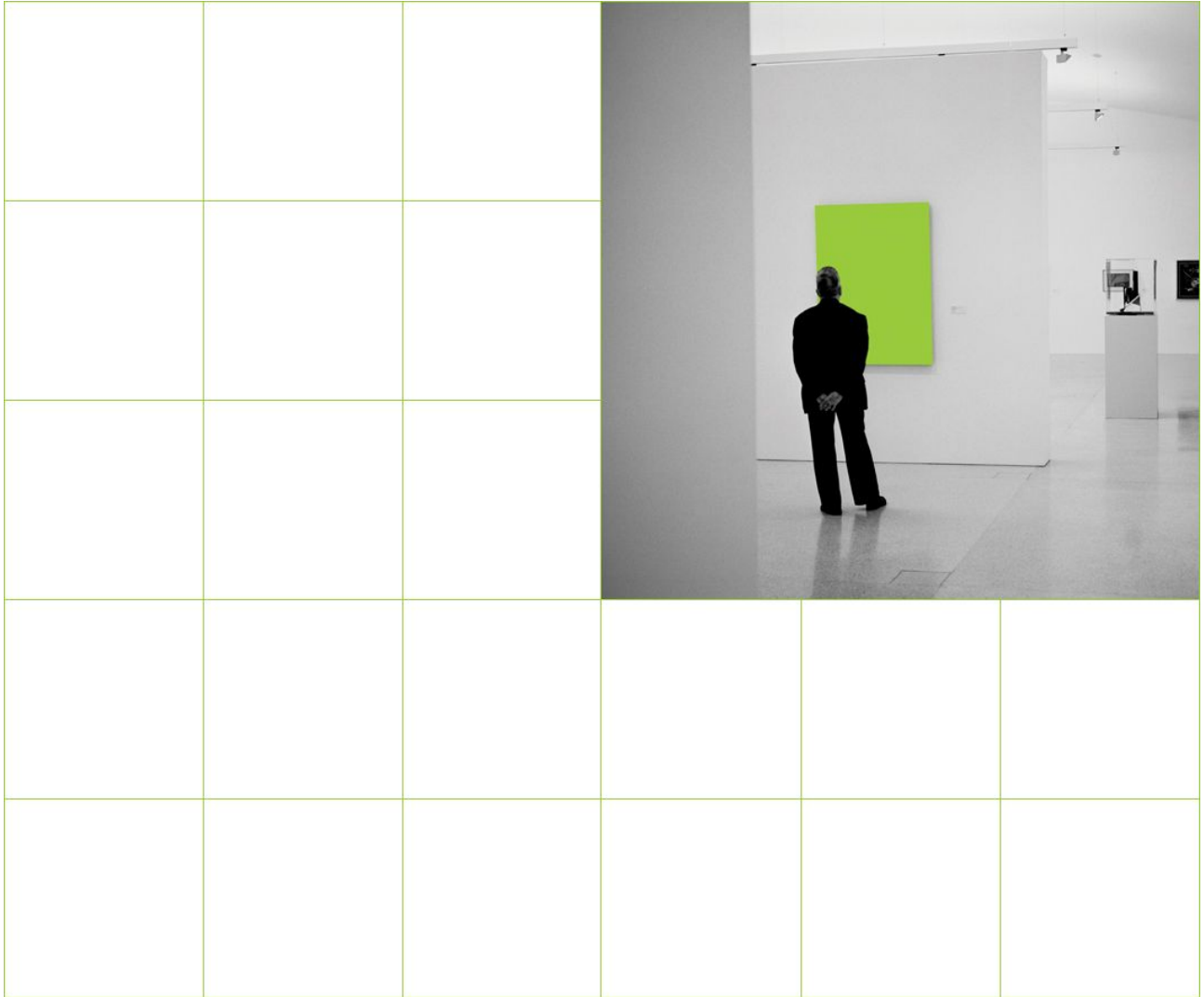




# CSSF Regulation No. 15-07



# CSSF Regulation No. 15-07

## COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

*Unofficial translation of the French original*

**CSSF Regulation No. 15-07 adopting the implementing measures of Article 42bis of the Law of 13 February 2007 on specialised investment funds as regards the requirements in respect of risk management and conflicts of interest for specialised investment funds which are not covered by the specific provisions of Part II of this law**

The Executive Board of the Commission for the Supervision of the Financial Sector,

Having regard to Article 108bis of the Constitution;

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

Having regard to the Law of 13 February 2007 on specialised investment funds;

Adopts:

### CHAPTER I

#### **SUBJECT MATTER, SCOPE AND DEFINITIONS**

##### *Article 1*

##### **Subject matter**

This Regulation adopts the implementing measures of paragraphs (1) and (2) of Article 42bis of the Law of 13 February 2007 on specialised investment funds;

- 1) concerning the appropriate risk management systems as referred to in Article 42bis, paragraph (1) of the Law of 13 February 2007 on specialised investment funds and, in particular, the criteria for assessing the adequacy of the risk management systems employed by specialised investment funds;
- 2) concerning the structures and organisational requirements referred to in Article 42bis, paragraph (2) of the Law of 13 February 2007 on specialised investment funds intended to minimise the risks of conflicts of interest.

##### *Article 2*

##### **Scope**

This Regulation applies to specialised investment funds within the meaning of Article 1 of the Law of 13 February 2007 on specialised investment funds which are not covered by the specific provisions under Part II of this law which apply to specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

### *Article 3*

#### **Definitions**

For the purposes of this Regulation, the following definitions shall apply in addition to those set out in the Law of 13 February 2007 on specialised investment funds:

- 1) "counterparty risk" means the risk of loss for the specialised investment fund resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow;
- 2) "liquidity risk" means the risk that a position in the specialised investment fund's portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame and that the ability of the specialised investment fund to comply at any time with the conditions and procedures set forth in the management regulations or in the articles of incorporation in accordance with Articles 8 and 28, paragraph (2) of the Law of 13 February 2007 on specialised investment funds is thereby compromised;
- 3) "market risk" means the risk of loss for the specialised investment fund resulting from fluctuation in the market value of positions in the specialised investment fund's portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's creditworthiness;
- 4) "operational risk" means the risk of loss for the specialised investment fund resulting from inadequate internal processes and failures in relation to people and systems or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the specialised investment fund;
- 5) "directors"<sup>1</sup> means the persons referred to in Article 42 (3) of the Law of 13 February 2007 on specialised investment funds;
- 6) "relevant person" means any person contributing towards the activities of the specialised investment fund or any person directly or indirectly linked to the specialised investment fund.

### CHAPTER II

#### **RISK MANAGEMENT**

### *Article 4*

#### **Organisation of the risk management system**

1. Specialised investment funds shall establish and maintain a risk management function.
2. The risk management function referred to in paragraph (1) shall be hierarchically and functionally independent from operating units.

However, the CSSF may allow a specialised investment fund to derogate from that obligation of independence where the derogation is appropriate and proportionate in view of the nature, scale, complexity and structure of that specialised investment fund's business.

A specialised investment fund must be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow for the independent performance of risk management activities, and that its risk management system satisfies the requirements of Article 42bis, paragraph (1) of the Law of 13 February 2007 on specialised investment funds.

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<sup>1</sup> The original French regulation uses the term "dirigeants" which includes directors, managers and officers.

3. The risk management function shall have the necessary authority and access to all relevant information necessary to fulfil its duties.

4. Specialised investment funds may delegate all or part of the activity of the risk management function to third parties, provided that the third party has the necessary competence and capacity to perform the activities of the risk management function reliably, professionally and efficiently in accordance with the applicable legal and regulatory requirements.

Delegation to third parties neither relieves the directors of specialised investment funds in any way of their responsibility in relation to the adequacy and efficiency of the risk management system, nor does it relieve them in terms of monitoring the risks associated with the activities of the specialised investment fund referred to in Article 5 of this Regulation.

5. The directors must adopt the risk management system of the specialised investment fund, and, thereafter, subject it to a regular and documented review.

6. Specialised investment funds must communicate to the CSSF, as part of their authorisation file, a description of the risk management system. Subsequently, any material change to their risk management system must be notified to the CSSF.

#### *Article 5*

### **Risk management function**

1. The risk management function shall:

a) implement and maintain an adequate and documented risk management policy intended to detect, measure, manage and monitor appropriately the exposure to market, liquidity and counterparty risks, and the exposure to all other risks, including operational risks, which may be material for the activities of the specialised investment fund;

b) ensure compliance with the specialised investment fund's risk limitation system.

2. For the purposes of paragraph (1), specialised investment funds shall take into account the nature, scale and complexity of the business as well as the structure of the specialised investment fund.

#### *CHAPTER III*

### **CONFLICTS OF INTEREST**

#### *Article 6*

### **Criteria for the identification of conflicts of interest**

1. For the purposes of detecting the types of conflicts of interest that may arise in the course of providing services and activities, and whose existence may damage the interests of specialised investment funds, specialised investment funds shall take into consideration, by way of minimum criteria, the possibility that a relevant person finds itself in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

a) that person is likely to make a financial gain, or avoid a financial loss, at the expense of the specialised investment fund;

b) that person has an interest in the outcome of a service provided to the specialised investment fund or to another client or of an activity performed for their benefit or of a transaction carried out on behalf of the specialised investment fund or another client, which does not coincide with the interests of the specialised investment fund in that outcome;

- c) that person is incited for financial or other reasons to privilege the interests of another client or group of clients over the interests of the specialised investment fund;
- d) that person carries out the same activities for the specialised investment fund as for one or more clients which are not specialised investment funds;
- e) that person receives or will receive from a person other than the specialised investment fund an inducement in relation to the activities of collective portfolio management provided to the specialised investment fund, in the form of money, goods or services other than the commission or fee normally billed for that service.

2. Specialised investment funds shall take into consideration, when detecting the types of conflicts of interest, the interests of the specialised investment fund, including those deriving from their belonging to a group or from the performance of services or activities, the interests of the clients and the obligations of the specialised investment fund towards its unitholders.

#### *Article 7*

### **Conflicts of interest policy**

1. Specialised investment funds shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the specialised investment fund and the nature, scale and complexity of its activity.

Specialised investment funds shall also establish, implement and maintain a policy in order to prevent any relevant person from entering into personal transactions which may give rise to a conflict of interest.

Specialised investment funds shall develop an adequate policy to prevent or manage any conflict of interest resulting from the exercise of voting rights attaching to the instruments held.

Where the specialised investment fund belongs to a group, the policy shall also take into account any circumstances which may give rise to a conflict of interest resulting from the structure and the activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph (1) shall in particular:

- a) identify, in relation to the activities of collective portfolio management carried out by or on behalf of the specialised investment fund, the situations which give rise or may give rise to a conflict of interest entailing a material risk to the interests of the specialised investment fund;
- b) define the procedures to be followed and the measures to be adopted in order to manage such conflicts.

3. Specialised investment funds must, as part of their authorisation file, confirm to the CSSF the implementation of a conflicts of interest policy.

#### *Article 8*

### **Independence in conflicts management**

1. The procedures and measures provided for in Article 7, paragraph (2) point b) of this Regulation shall guarantee that the relevant persons engaged in different activities involving a conflict of interest carry out those activities with a level of independence appropriate to the size and activities of the specialised investment fund and of the group to which it belongs and to the materiality of the risk of damage to the interests of the specialised investment fund.

2. The procedures to be followed and measures to be adopted in accordance with Article 7, paragraph (2) point b) of this Regulation shall, where necessary and appropriate for the specialised investment fund to ensure the required degree of independence, include:

- a) efficient procedures to prevent or control the exchange of information between relevant persons engaged in activities of collective portfolio management involving a risk of a conflict of interest where the exchange of that information may harm the interests of the specialised investment fund;
- b) a separate supervision of relevant persons whose principal functions involve carrying out activities of collective portfolio management on behalf of, or providing services to, clients or investors when the interests of these clients or investors may conflict, or when these clients represent different interests that may conflict with the interests of the specialised investment fund;
- c) the removal of any direct link between the remuneration of relevant persons principally engaged in one given activity and the remuneration of, or revenues generated by, other relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out activities of collective portfolio management;
- e) measures to prevent or control the simultaneous or consecutive participation of a relevant person in several different activities of collective portfolio management where such participation may impair the proper management of conflicts of interest.

If the adoption or the implementation of one or more of those measures and procedures does not ensure the required level of independence, specialised investment funds shall adopt such additional or substitutional measures and procedures that will be necessary and appropriate for those purposes.

#### *Article 9*

##### **Management of activities giving rise to detrimental conflicts of interest**

1. Specialised investment funds shall keep and regularly update a record of the types of activities of collective portfolio management undertaken by or on behalf of the specialised investment fund in which a conflict of interest entailing a material risk of damage to the interests of the specialised investment fund has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

2. Where the organisational or administrative arrangements made by the specialised investment fund to manage conflicts of interest are not sufficient to guarantee, with reasonable certainty, that risks of damage to the interests of the specialised investment fund or of its unitholders will be prevented, the directors<sup>2</sup> shall be promptly informed in order for them to take any necessary decision to guarantee that in all cases the specialised investment fund will act in the best interests of the specialised investment fund and of its unitholders.

3. Specialised investment funds shall report situations referred to in paragraph (2) to investors by any appropriate durable medium and give reasons for their decision.

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<sup>2</sup> The French text refers to "dirigeants".

*Article 10*

**Publication**

This Regulation will be published in the Mémorial and on the website of the CSSF.

This Regulation enters into force on the first day of the month following its publication in the "Mémorial".

This Regulation cancels and replaces CSSF Regulation No. 12-01 adopting the implementing measures of Article 42bis of the Law of 13 February 2007 on specialised investment funds as regards the requirements in respect of risk management and conflicts of interest.

Luxembourg, 31 December 2015

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