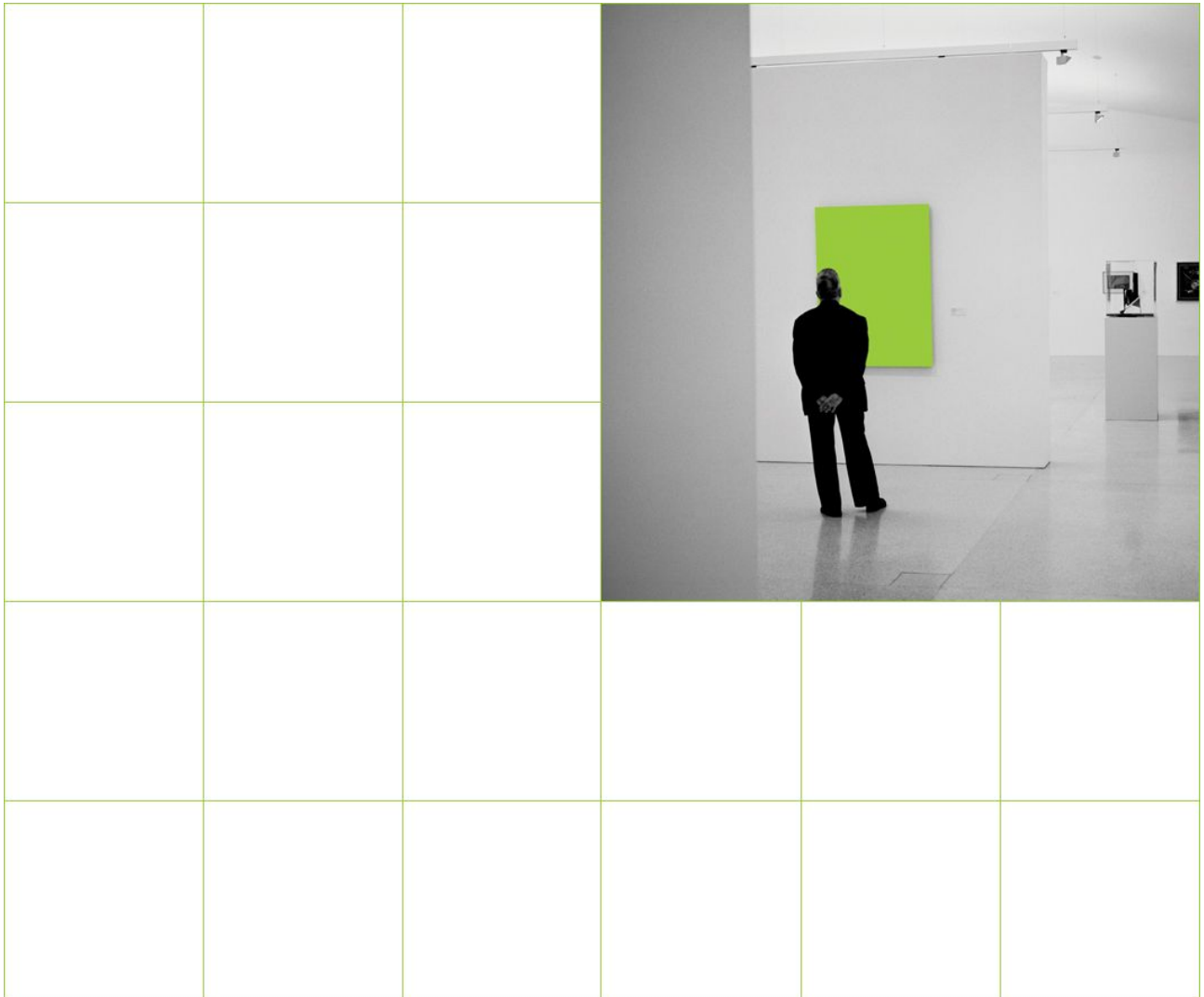




CSSF Regulation No. 15-08



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COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

Unofficial translation of the French original

CSSF Regulation No. 15-08 adopting the implementing measures of Article 7bis of the Law of 15 June 2004 on SICARs as regards the requirements in respect of the management of conflicts of interest for SICARs 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 15 June 2004 on the investment company in risk capital (SICAR);

Adopts:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation adopts the implementing measures of the first paragraph of Article 7bis of the Law of 15 June 2004 on SICARs regarding the structures and organisational requirements intended to minimise the risks of conflicts of interest.

Article 2

Scope

This Regulation applies to SICARs within the meaning of Article 1 of the Law of 15 June 2004 on SICARs which are not covered by the specific provisions under Part II of this law which apply to SICARs 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 15 June 2004 on SICARs:

- 1) "directors"¹ means the persons referred to in Article 12 (3) of the Law of 15 June 2004 on SICARs;
- 2) "relevant person" means any person contributing towards the activities of the SICAR or any person directly or indirectly linked to the SICAR.

CHAPTER II

CONFLICTS OF INTEREST

Article 4

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 SICARs, SICARs shall take into consideration, by way of minimum criteria, the possibility that a relevant natural or legal 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 which gives rise to a conflict of interest at the expense of the SICAR;
- b) that person has an interest in the outcome of a service provided to the SICAR or to another client or of an activity performed for their benefit or of a transaction carried out on behalf of the SICAR or another client, which does not coincide with the interests of the SICAR 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 SICAR;
- d) that person carries out the same activities for the SICAR as for one or more clients which are not SICARs;
- e) that person receives or will receive from a person other than the SICAR an inducement in relation to the activities of collective portfolio management provided to the SICAR, in the form of money, goods or services other than the commission or fee normally billed for that service.

2. SICARs shall take into consideration, when detecting the types of conflicts of interest, the interests of the SICAR, 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 SICAR with regard to its investors.

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

Article 5

Conflicts of interest policy

1. SICARs 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 SICAR and the nature, scale and complexity of its activity.

SICARs 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.

SICARs 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 SICAR 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 SICAR, the situations which give rise or may give rise to a conflict of interest entailing a material risk to the interests of the SICAR;

b) define the procedures to be followed and the measures to be adopted in order to manage such conflicts.

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

Article 6

Independence in conflicts management

1. The procedures and measures provided for in Article 5, 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 SICAR and of the group to which it belongs and to the materiality of the risk of damage to the interests of the SICAR.

2. The procedures to be followed and measures to be adopted in accordance with Article 5, paragraph (2) point b) of this Regulation shall, where necessary and appropriate for the SICAR 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 SICAR;

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 SICAR;

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, SICARs shall adopt such additional or substitutional measures and procedures that will be necessary and appropriate for those purposes.

Article 7

Management of activities giving rise to detrimental conflicts of interest

1. SICARs shall keep and regularly update a record of the types of activities of collective portfolio management undertaken by or on behalf of the SICAR in which a conflict of interest entailing a material risk of damage to the interests of the SICAR 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 SICAR to manage conflicts of interest are not sufficient to guarantee, with reasonable certainty, that risks of damage to the interests of the SICAR or of its investors will be prevented, the directors² shall be promptly informed in order for them to take any necessary decision to guarantee that in all cases the SICAR will act in the best interests of the SICAR and of its investors.
3. SICARs shall report situations referred to in paragraph (2) to investors by any appropriate durable medium and give reasons for their decision.

Article 8

Publication

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

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

SICARs already in existence at the moment of the entry into force of this Regulation have until 31 March 2016 at the latest to comply with the provisions of this Regulation.

Luxembourg, 31 December 2015

COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

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² The French text refers to "dirigeants".

