



## Luxembourg Newsflash - 10 June 2021

# Application of MiFID to Luxembourg IFMs

On 10 June 2021, the CSSF published an FAQ on the application of the Markets in Financial Instruments Directive ("MiFID") to Luxembourg Investment Fund Managers ("IFMs"), which will consequently trigger updates to the CSSF's FAQs on the law of 17 December 2010 on UCIs (the "2010 Law") and on the law of 12 July 2013 on AIFMs (the "2013 Law").

The CSSF clarifies under what circumstances and the extent to which MiFID rules apply to IFMs, their third-party delegates and their investment advisers.

Among the clarifications provided, the following information is key:

## Collective Portfolio Management – Application of MiFID or exemption?

While the performance of collective portfolio management functions by a UCI or IFM does not fall in-scope of the MiFID rules, that is no longer the case where these functions are entrusted to a delegate: going forward, the exemption will cease to apply where such functions are (i) undertaken by an authorised IFM under a delegation arrangement from another authorised IFM ("delegate IFM") or (ii) delegated by an authorised IFM to a third party ("third-party delegate").

- **Delegate IFM**

Depending on the tasks/functions performed, the delegate IFM must, in principle, be authorised to perform discretionary portfolio management and non-core services (including investment advice) under Article 101 (3) of the 2010 Law or Article 5 (4) of the 2013 Law (having been granted a so-called "top-up licence"). These delegate IFMs will then be subject to some of the MiFID rules.

- **Third-party delegate**

A third-party delegate may also become subject to MiFID rules depending on which services/activities it performs on behalf of the IFM.

## Marketing – Application of MiFID or exemption?

Where the marketing of funds under management by the IFM is not performed by the IFM itself, no exemption applies and the entity performing the marketing on behalf of the IFM may be subject to MiFID rules, depending on where and to whom the funds are distributed.

Where a Luxembourg IFM markets funds that are not under its management, as a delegate of another IFM, authorisation under Article 101 (3) of the 2010 Law or Article 5 (4) of the 2013 Law as mentioned above will be required, depending on the fund type and services offered.

## Special terms for investment advice?

Collective portfolio management does not encompass investment advice for the purposes of the 2010 Law or the 2013 Law. Nevertheless, MiFID rules apply in principle to third parties that give investment advice relating to financial instruments which allows the IFM to take an investment decision, as this will qualify as a personal recommendation.

## Investment services provided by third parties – exemptions possible?

Exemptions are available to third parties that provide investment services to IFMs. These may be (i) specific exemptions under the amended law of 5 April 1993 on the financial sector, such as intragroup service exemptions, or (ii) partial exemptions from MiFID rules, with an obligation upon third parties to be able to prove, at any time, that they indeed fall under the exemption claimed.

## Timing

IFMs are expected to comply with the CSSF FAQ as soon as possible, and by 31 December 2021 at the latest, considering the best interests of investors.

Should you require more detailed information and assistance on the above topic and as to the impact of the above, in particular in the context of CSSF Circular 20/743, please liaise with your usual contact in the Fund Formation Team.

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