

Pathfinder

Deloitte Monthly Regulatory Update






July 2014

In this issue:

- **Alternative investment fund manager (AIFM)**
- **Anti-Money Laundering (AML)**
- **Capital Requirements Directive and Regulation (CRD IV / CRR)**
- **Central Securities Depositories (CSD)**
- **Depositary banks**
- **European Market and Infrastructure Regulation (EMIR)**
- **Immobilisation of bearer shares**
- **Insurance brokerage**
- **Open-ended undertakings for collective investment (UCIs) – Protection of investors**
- **Payment accounts**
- **Reinsurance**
- **Single Resolution Mechanism (SRM)**
- **Solvency II**
- **UCITS V**


Welcome to Pathfinder

Regulatory summary table – July 2014

Topic	Leg/Reg	Prof/Assoc
Alternative Investment Fund Managers Directive (AIFM)		<p>CSSF frequently asked questions concerning the Luxembourg Law of 12 July 2013 on alternative investment fund managers as well as the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage transparency and supervision, version 7 – <i>Commission de Surveillance du Secteur Financier</i> 18/07/2014</p> <p> Deloitte alert</p> <p> FAQ</p> <hr/> <p>Update of ESMA questions and answers on the application of the Alternative Investment Fund Managers Directive – European Securities and Markets Authority 21/07/2014</p> <p> FAQ</p>


**Anti-Money
Laundering
(AML)** CSSF Circular 14/590: FATF
statements - *Commission de
Surveillance du Secteur Financier*
01/07/2014

 [Deloitte summary](#)

 [Original text](#) (French
only at this stage)

CAA Circular Letter 14/9: FATF
statements – *Commissariat aux
Assurances* 01/07/2014

 [Deloitte summary](#)

 [Original text](#) (French
only at this stage)

**Capital
Requirements
Directive and
Regulation
(CRD IV / CRR)** Commission Implementing
Regulation (EU) No 680/2014 of
16 April 2014 laying down imple-
menting technical standards with
regard to supervisory reporting of
institutions according to Regulation
(EU) No 575/2013 of the European
Parliament and of the Council –
Official Journal L 191 28/06/2014

 [Original text](#)

Series of EBA lists for the calculation of capital
requirements for credit risk – European Banking Authority
02/07/2014

 Original texts:

[List of EU regional governments and local
authorities treated as exposures to central
governments under Article 115\(2\) of Regulation
\(EU\) 575/2013](#)

[List of changes to risk weights or stricter
criteria for exposures secured by immovable
property in accordance with Article 124\(2\) of
the Regulation \(EU\) 575/2013](#)

[List of changes to minimum LGD for retail
exposures secured by residential or
commercial immovable property in accordance
with Article 164\(5\) of Regulation \(EU\) 575/2013](#)

[List of exposures referred to in Article 150\(1\)\(g\)
and \(h\) to be treated according to Standardised
Approach in accordance with Article 150\(1\) the
Regulation \(EU\) 575/2013](#)

EBA final guidelines on significant credit risk transfer
relating to Articles 243 and Article 244 of Regulation
575/2013 – European Banking Authority 07/07/2014

 [Original text](#)

EBA final draft regulatory technical standards on the
conditions for assessing the materiality of extensions and
changes of internal approaches when calculating own
funds requirements for market risk under Article 363(4) of
Regulation (EU) No 575/2013 – European Banking
Authority 04/07/2014

 [Original text](#)

EBA final draft regulatory technical standards on the margin periods of risk used for the treatment of clearing members' exposures to clients under Article 304(5) of Regulation (EU) No 575/2013 – European Banking Authority 04/07/2014

 [Original text](#)

EBA revised guidelines on high earners data collection and remuneration benchmarking – European Banking Authority 16/07/2014

 Original texts:

[Guidelines on remuneration benchmarking](#)

[Guidelines on high earners data collection](#)

Central Securities Depositories (CSD) Adoption by the Council of the European Union of the proposal for a Regulation on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) N° 236/2012 – Council of the European Union 23/07/2014

 [Deloitte summary](#)







 [Original text](#)

Depositary banks CSSF Circular 14/587: Provisions applicable to credit institutions acting as UCITS depository subject to Part I of the Law of the 17 December 2010 relating to undertakings for collective investment and to all UCITS, where appropriate, represented by their management company – *Commission de Surveillance du Secteur Financier* 11/07/2014

 [Deloitte alert](#)

 [Original text](#) (French only at this stage)

European Market and Infrastructure Regulation (EMIR)		<p>ESMA updated questions and answers on implementation of the Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) - European Securities and Markets Authority 10/07/2014</p> <p> Deloitte summary</p> <p> FAQ</p>
Immobilisation of bearer shares	<p>Approval by the <i>Chambre des Députés</i> of the Draft Law 6625 on the immobilisation of bearer shares – <i>Chambre des Députés</i> 22/07/2014</p> <p> Deloitte summary</p> <p> Original text</p>	
Insurance brokerage		<p>CAA frequently asked questions on insurance brokerage – <i>Commissariat aux Assurances</i> 17/07/2014</p> <p> Deloitte summary</p> <p> FAQ (French only at this stage)</p>
Open-ended undertakings for collective investment (UCIs) – Protection of investors	<p>CSSF Circular 14/591: Protection of investors in case of a material change to an open-ended undertaking for collective investment - <i>Commission de Surveillance du Secteur Financier</i> 22/07/2014</p> <p> Deloitte summary</p> <p> Original text</p>	
Payment accounts	<p>Adoption by the Council of the European Union of the proposal for a Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features - Council of the European Union 23/07/2014</p> <p> Deloitte summary</p> <p> Original text</p>	

Reinsurance	<p>Grand-Ducal Regulation of 4 July 2014 on authorisation and operating conditions for reinsurance companies- <i>Mémorial</i> A 119 11/07/2014</p> <p> Deloitte summary</p> <p> Original text (French only at this stage)</p>
Single Resolution Mechanism (SRM)	<p>Regulation (EU) 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010- Official Journal L 225 30/07/2014</p> <p> Original text</p>
Solvency II	<p>EIOPA underlying assumptions in the standard formula for the solvency capital requirement calculation – European Insurance and Occupational Pension Authority 25/07/2014</p> <p> Original text</p>
UCITS V	<p>Adoption by the Council of the European Union of the proposal for a Directive amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions - Council of the European Union 23/07/2014</p> <p> Deloitte alert</p> <p> Original text</p>

Deloitte alerts and summaries

Alternative Investment Fund Manager (AIFM)

CSSF frequently asked questions concerning the Luxembourg Law of 12 July 2013 on alternative investment fund managers as well as the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage transparency and supervision, version 7 – Commission de Surveillance du Secteur Financier 18/07/2014

On 18 July 2014, the CSSF published its updated Frequently Asked Questions (FAQ) concerning the Luxembourg Law of 12 July 2013 on alternative investment fund managers.

Marketing of AIFs on the basis of article 45 of the Law of 2013

The CSSF clarifies that non-EU AIFMs are required to inform the CSSF prior to commencing any marketing activities, even when targeting professional investors. The CSSF also states that non-EU AIFMs must inform the CSSF should they decide to terminate marketing activities in Luxembourg.

As part of the process, non-EU AIFMs must complete a specific form which is to be submitted to the CSSF as soon as non-EU AIFM wishes to start marketing non-regulated Luxembourg AIFs to professional investors in Luxembourg. It is further confirmed that non-EU AIFMs are not required to apply for an authorisation in accordance with article 32(5) of the Law of 5 April 1993 on the financial sector.

Reporting scope and timing

The FAQs also includes an update on the deadlines for the transmission of the AIFMD reports depending on the reporting frequency. It also clarifies that the date to be taken into consideration for the determination of the applicable reporting obligations is the effective date of their status as Authorised or Registered AIFM.

Although already clarified in the FAQs earlier this year, unless otherwise specified within the FAQs, the term “AIF” covers AIFs irrespective of whether they are established in Luxembourg, in another EU Member State or in a non-EU Member State and irrespective of whether they are classed as regulated or non-regulated AIFs.

[Back to top](#)

Anti-money laundering (AML)

CSSF Circular 14/590: FATF statements – Commission de Surveillance du Secteur Financier 01/07/2014
(French only at this stage)

CAA Circular Letter 14/9: FATF statements – Commissariat aux Assurances 01/07/2014 (French only at this stage)

Both Circulars notify that:

- Jurisdictions whose anti-money laundering and terrorist financing regimes have substantial and strategic deficiencies are still Iran and Democratic Republic of Korea;
- Jurisdictions not making sufficient progress are Algeria, Ecuador, Indonesia and Burma / Myanmar

- Jurisdictions whose anti-money laundering and terrorist financing regimes are not satisfactory are the following: Afghanistan, Albania, Angola, Argentina, Cambodia, Cuba, Ethiopia, Iraq, Kuwait, Lao People's Democratic Republic, Namibia, Nicaragua, Panama, Papua New Guinea, Pakistan, Sudan, Syria, Tajikistan, Turkey, Uganda, Yemen and Zimbabwe.
- Due to substantial efforts demonstrated by Kenya, Kyrgyzstan, Mongolia, Nepal and Tanzania, these courts are no longer subject to monitoring process of the Financial Action Task Force.

[Back to top](#)

Depositary banks

CSSF Circular 14/587: Provisions applicable to credit institutions acting as UCITS depositary subject to Part I of the Law of the 17 December 2010 relating to undertakings for collective investment and to all UCITS, where appropriate, represented by their management company – *Commission de Surveillance du Secteur Financier* 11/07/2014 (French only at this stage)

Scope and background

The Luxembourg Supervisory Authority CSSF has published on Circular 14/587 (the “Circular”) in order to clarify existing provisions by defining organisational rules, roles and responsibilities for depositary banks, and the interaction of management companies with the depositary.

The Circular replaces section E of IML circular 91/75 and targets credit institutions acting as depositary bank for UCITS subject to Part I of the Law of 17 December 2010 and, as the case may be, their management company.

These new rules draw heavily on the Alternative Investment Fund Managers Directive (AIFMD) and anticipate the transposition of the UCITS V Directive. However, applicable rules to depositary banks of AIFs are set up by the Law of 12 June 2013 implementing AIFMD and therefore are not included in the Circular.

The extent of detail provided in the Circular clearly shows the regulator’s determination to move away from a principle-based regulation in favor of detailed guidance.

What are the key attention points of the Circular?

- Depositary banks will have to implement internal procedures that govern the acceptance of mandates and their execution. These procedures shall cover all specificities of UCITS for which the bank acts as depositary, including the consideration of intended investments. They shall also specify and analyse, on a preliminary basis, which type of UCITS according to their investment strategy, the depositary bank would be able to service, considering existing processes and internal controls.
- Depositary banks will have to enhance provisions applied to the selection and the monitoring of sub-custodians and third-party custodians. They shall notably conduct due diligence in order to ensure that there is an appropriate level of protection for assets entrusted to such entities and that guarantees provided are adequate (similar to guarantees provided by the depositary bank itself). The Circular clarifies the holding securities via a Securities Settlement System (SSS) is not a delegation of custody function. However, in some circumstances, this should not deter the depositary bank from undertaking due diligence of sub-custodians albeit in an abridged form.
- Specific due diligence shall also be performed on specialised intermediaries - e.g. transfer agents when investment are made in target UCI(T)S.

- Depository banks will have to ensure that segregation of assets at the sub-custodian level shall be ensured between collectively managed assets, not collectively managed assets and own assets of the depository.
- An escalation processes shall be set up between depository banks and management companies to report reciprocally any detected anomalies.
- Depository banks are required to ensure adequate monitoring and accounting of cash accounts and cash flows. Adequate processes and procedures are to be put in place to ensure this. The UCITS (or its management company) shall ensure that the depository bank receives all information needed to fulfil its obligations regarding recognition and proper monitoring of cash.

[Back to top](#)

Central Securities Depositories (CSD)

Adoption by the Council of the European Union of the proposal for a Regulation on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 – Council of the European Union 23/07/2014

The European Council has adopted on 23 July 2014 a regulation on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

The CSD regulation aims to harmonise both the timing and conduct of securities settlement in Europe and the rules governing central securities depositories which operate the infrastructures enabling settlement.

It creates for the first time at European level, a common authorisation, supervision and regulatory framework for central securities depositories.

More details on this subject on [our Pathfinder of April 2014](#).

[Back to top](#)

EMIR

ESMA updated questions and answers on implementation of the Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) - European Securities and Markets Authority 10/07/2014

ESMA updated its EMIR questions and answers on the following issues:

- No exemption from clearing obligations to pension scheme established in third countries.
- Segregation requirement non-EU clearing members of European central counterparties.

[Back to top](#)

Immobilisation of bearer shares

Approval by the *Chambre des Députés* of the **Draft Law 6625 on the immobilisation of bearer shares** – *Chambre des Députés* 22/07/2014

On 16 July 2014, the *Chambre des Députés* approved the Draft Law relating to immobilisation of bearer shares. This Law aims to implement the recommendations of the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes in terms of identification of holders of bearer shares. The new rules apply to all Luxembourg companies and investment funds which have issued bearer shares.

The current draft Law specifies that bearer shares will have to be deposited with a professional custodian which will be appointed by the management of the issuing entity. The custodian will be required to maintain a register containing all the information necessary to identify bearer share holders. This depository must be chosen from a list of professional provided by the law which includes notably credit institutions, notaries, chartered accountants and private portfolio managers.

This immobilisation process will enable the availability of information for judicial and fiscal authorities, and, by the inclusion of bearer shares issued by companies and undertakings for collective investment in its scope, compliance with FATCA.

Application of the law will be retroactive for bearer shares issued before the publication of the law, a depository must be appointed within the 6 months following the entry into force of the law and such shares have to be deposited within the 18 months following the entry into force of the law.

In the case where the bearer shares are not deposited, they will be subject to suspension after 6 months and to cancellation after 18 months. Once the bearer shares cancelled, the capital of issuer will have to be reduced as consequence.

Currently, the holders of Luxembourg bearer shares (“actions au porteur”) are not identified in the register of shareholders of companies. The OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes recommended that Luxembourg should take appropriate actions to ensure the availability of information relating to holders of those shares in all circumstances.

[Back to top](#)

Insurance brokerage

CAA frequently asked questions on insurance brokerage – *Commissariat aux Assurances* 17/07/2014
(French only at this stage)

Main covered topics are:

- Use of private investigation office for the purpose of “know your customer”;
- Record keeping;
- Status of intermediaries;
- Audit of accounting reports;
- Financial base;
- Sub-brokerage arrangements.

[Back to top](#)

Open-ended undertakings for collective investment (UCIs) – Protection of investors

CSSF Circular 14/59:1 Protection of investors in case of a material change to an open-ended undertaking for collective investment – *Commission de Surveillance du Secteur Financier* 22/07/2014

This Circular is applicable to all Luxembourg undertakings for collective investment subject to the Law of 17 December 2010 and is already applicable.

The Law of 17 December 2010 requires that sufficient time be provided to investors in order for them to take an informed decision on the envisaged. The purpose of this circular is to explicitly lay down administrative process and provide clarifications in writing.

When considering a material change to their structure, organisation or operations, **UCIs should**:

- Question whether is a possibility that an investor would reconsider its investment in the UCI.
- Analyse the impact it may have on its investors.
- Submit the proposed change, together with the appropriate explanations for such a change to the CSSF.

This should happen before the change becomes effective.

The minimum notification period regarding any significant change to the UCI they are invested in should be one (1) month.

During this, one-month investors have the right to:

- Request without any charge the repurchase or redemptions of their units.
- UCI may also offer the investors to convert their units into units in another UCI without any conversion charges.

[Back to top](#)

Payment accounts

Adoption by the Council of the European Union of the **proposal for a Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features** - Council of the European Union 23/07/2014

The European Council has adopted on 23 July 2014 the proposal for a Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

This Directive will enable consumers to make informed choices when opening a payment account by improving the transparency and comparability of information on account fees, whilst eliminating discrimination based on residency. It will also enable consumers to switch accounts more easily.

The Directive sets rules and conditions guaranteeing the provision of payment accounts with basic features to any consumer residing legally in a member state of the EU. Consumers may be required to show a genuine interest in opening an account, though the requirement must not be too burdensome. A fee information document must be provided, using a clear and standardised format, and member states must ensure access, free of charge, to at least one website comparing fees charged by service providers.

The Directive also establishes rules on the switching of accounts within a member state, and making it easier to open an account in another member state.

[Back to top](#)

Reinsurance

Grand-Ducal Regulation of 4 July 2014 amending modified Grand-Ducal Regulation of 5 December 2007 specifying the conditions for authorization and operating for reinsurance businesses - *Mémorial* A 119 of 11/07/2014 (French only at this stage)

Thresholds for guarantee funds are updated to:

- 3.600.000 million euros for reinsurance (previously: EUR 3.000.000) ; and
- 1.125.000 euros for reinsurance captives (previously: EUR 1.225.000).

This Regulation is applicable for the first time to the financial year starting on 1 January 2015.

[Back to top](#)

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