

Regulatory News Alert

The CSSF clarifies important MiFID implications for fund managers

22 June 2021

Context and objectives

On 10 June 2021, the Commission de Surveillance du Secteur Financier (CSSF) published [an FAQ](#) on the application of the Markets in Financial Instruments Directive (MiFID) to investment fund managers (IFMs). The FAQ aims to clarify the circumstances and the extent that the MiFID applies to IFMs, their third-party delegates, and their investment advisers.

In principle, IFMs are exempt from the MiFID, as collective portfolio management (CPM) is not considered a MiFID service.

However, the MiFID will apply to CPM services provided **based on a delegation agreement** by:

- Third parties to an authorized IFM; and
- An authorized IFM to another authorized IFM.

Third-party delegates

In any case, the MiFID will apply to **EU third-party delegates**, who provide—on behalf of IFMs—investment services and other activities listed under Annex I of the MiFID, if these relate to financial instrument transactions as defined under section C Annex I of the MiFID.

If a third party **established outside of the EU** provides investment services on behalf of IFMs, the MiFID will apply if these services are considered rendered in Luxembourg¹.

IFM delegates

If an IFM **delegates one or several functions included in the CPM to another IFM**, the **delegate IFM** must, in principle, depending on the tasks performed, be authorized to provide discretionary portfolio management and non-core services foreseen under article 101 (3) of the Law of 2010 or article 5 (4) of the Law of 2013. These include investment advice, administration of units of UCIs or, for authorized AIFMs, reception and transmission of orders (RTO).

The delegate IFMs are not authorized to provide other MiFID services.

The **following MiFID rules** will apply to these IFM delegates:

- Capital requirements;
- Organizational requirements (written decision-making procedures, conflicts of interest, internal control mechanisms, risk management framework, product governance, outsourcing, record-keeping, safeguarding of clients' assets, etc.);
- Client information; and
- Suitability and/or appropriateness tests.

Importantly, any Luxembourg IFM that **markets funds** it does not directly manage **on behalf of another IFM**, acts as an intermediary and qualifies as an investment firm under the MiFID. Therefore, it must be authorized under article 101 (3) of the Law of 2010 or article 5 (4) of the Law of 2013, depending on the type of fund and services offered—namely, discretionary portfolio management and also, at least, safekeeping and administration of UCIs or, for authorized AIFMs, RTO relating to UCIs. The previously mentioned provision on the delegation of CPM also applies to these IFM delegates.

By the same token, a MiFID top-up license is required for **EU IFMs** that **market in Luxembourg** funds on behalf of another IFM.

Fully fledged MiFID license

IFMs that market funds on behalf of another IFM **through MiFID services** require a full MiFID license (provided that no exemption stipulated in article 2 of the MiFID applies).

In this regard, the CSSF provides a list of the MiFID/investment services that may be used for the distribution of funds:

- RTO relating to UCIs;
- Execution of orders on behalf of clients;
- Dealing on own account;
- Portfolio management;
- Investment advice;
- Underwriting and/or placing of UCIs on a firm commitment basis; and
- Placing of UCIs without a firm commitment basis.

What does it mean for IFMs?

IFMs will have to perform a diligent scoping of their activities to determine if their operations are affected – this includes delegation arrangements to third parties but equally where the IFM acts itself as a delegate for other IFMs. When IFM delegates certain functions of its CPM function, it has to ensure that the delegate holds the required licences to perform the functions in accordance with MiFID – for delegates inside and outside of the EU.

Where the IFM performs marketing functions (or intends to perform these functions) for any funds other than its own, it needs to be equally authorized to perform these functions and hold the adequate MiFID licence to market these funds. This often goes along with the required implementation of MiFID rules and requirements within the organization of the IFM – a potentially considerable effort.

How can Deloitte help you?

IFMs are expected to comply with this FAQ as soon as possible and **by 31 December 2021 at the latest**. Deloitte's advisory specialists and dedicated services can help you **analyze your organization model** and **assess whether you need an authorization** to provide services under article 101 (3) of the Law of 17 December 2010 or article 5 (4) of the Law of 12 July 2013.

Deloitte's Regulatory Watch service helps you stay ahead of the regulatory curve to better manage and plan upcoming regulations.

¹ Conditions to be considered to determine whether investment services are provided in Luxembourg are given in Part III of Circular CSSF 19/716.

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