Deloitte.

Regulatory news alert

CSSF annual report 2015 - Investment Management

21 October 2016

Following the publication of the CSSF Annual Report 2015, you will find below a summary of remarks made by the CSSF with respect to investment management.

CSSF Regulation No 12-02

The CSSF points out that, under CSSF Regulation No 12-02, it is for the “dirigeants” (which includes directors, managers and officers) of investment firms or investment fund managers (IFM) to ensure that they have implemented procedures to identify and assess AML/CTF risks to which the fund is exposed, to categorise all UCI clients according to a number of defined risk levels and to mitigate in an efficient manner AML/CTF risks to which the fund is exposed. This policy for the management and mitigation of risks must be set out in writing and the regular checks that are conducted must be duly documented.

Annual Report SIF, UCITS & SICAR

The CSSF recalls that:

- Annual reports of UCI(TS) and SIF with multiple sub-funds should include, in accordance with the provisions of Section III of Chapter L of IML Circular 91/759, in addition to the globalized financial statements of the entity, the financial statements of sub-funds including, namely for UCI(TS) and SIFs, the information contained in Schedule B of Annex I to the 2010 Law and in Annex to the SIF Law respectively;
- Information on the liquidation or closing of the UCI(TS) and SIF sub-funds represent "significant information" within the meaning of Article 151 (3) of the 2010 Law and Article 52 (4) of the SIF Law respectively. Therefore, an annual report that does not cover all the sub-funds, including sub-funds that were liquidated or closed during the financial year under review, is not considered complete under the laws and regulations in force. Moreover, the financial statements in such an incomplete annual report, by consequence, also violate the fundamental principles of true and fair view of the opening balance as laid down in Articles 26 (3) and 51 (1) f) of the Law of 19 December 2002 on the commercial and companies register and the accounting and annual accounts of undertakings.

The CSSF also recalls that the authorised statutory auditor (réviseur d'entreprises agréé) of the entity must carry out checks on the sub-funds that are liquidated or closed during the financial year concerned namely in the notes communicated by the IRE.

The CSSF draws attention to the fact that the annual report of the UCI(TS), SIF and SICAR should take into account the significant events recorded between the closing date of the financial statements and the date of the audit report relating to these financial statements. In addition, the notes to the financial statements should contain information on the nature and financial impact of significant events after the balance sheet date that are not reflected in the profit and loss account or the balance sheet in accordance, in particular, with Article 65 of the Law of 19 December 2002 on the commercial and companies register and the accounting and annual accounts of undertakings.

Management Letter

The CSSF points out that at the end of Chapter P of IML Circular 91/75, the authorised statutory auditor of an UCI must communicate to the CSSF comments made in the course of the audit of the financial year. These comments shared and discussed with the "dirigeants" of UCIs in the course of audit, take the form of a management letter.

In this context, the CSSF expects the "dirigeants" of UCIs to take position with respect to these comments and to indicate in particular how they will take them into account and their written statements should be communicated to the CSSF as an integral part of the management letter.

CSSF Circular 02/77

Although CSSF Circular 02/77 does not apply automatically to SIF, the CSSF considers nevertheless that the SIF can either opt for the application of CSSF Circular 02/77, or set other internal rules which must remain within reasonable limits with respect to the SIF's investment policy. In this context, according to the CSSF, the SIF that has not set other internal rules must apply by default CSSF Circular 02/77.

CSSF Circular 11/512

The CSSF reiterates the importance of the risk profile and the system of internal limits in the risk management system of a management company or a SIAG. In more detail, the CSSF clarifies that the risk profile should first contain a qualitative description and explanation regarding the risk appetite for all risks that may be significant for the UCITS managed according to its investment policy.

The CSSF expects that the management companies and the SIAG incorporate in this risk profile indicators of risk levels (e.g. VaR, volatility, ratings, sensitivity to credit spreads) and corresponding internal limits, the whole as validated by the Board of Directors.

Article 43 (1) of the 2010 Law

With respect to the maximum of 20 % investment in deposits with the same counterparty, the CSSF draws attention of the “dirigeants” of investment firms or IFM to the requirement to put in place an organisational setup to ensure that, for all UCITS, liquidity management (cash management) linked to the investment operations and to the UCI’s capital is done in strict compliance with this limit.

Deloitte Luxembourg
560, rue de Neudorf
L-2220 Luxembourg

Tel: +352 451 451
Fax: +352 451 452 401
www.deloitte.lu