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Banks and investment firms
Regulatory update

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AML

1. Agreement on the 4th anti money laundering directive

The draft text over the 4th AML EU directive and Funds Transfers Regulation (related to FATF Recommendation 16) has been reviewed by the "trialogue" (European Parliament and the Council of the European Union based on a proposal from the European Commission) reached a consensus on 21 January 2015 at a meeting of the Committee for Permanent Representations (COREPER).

On 10 February 2015 the Council approved an agreement with the European Parliament on strengthened rules to prevent money laundering and terrorist financing.

The directive and regulation will strengthen EU rules against money laundering and ensure consistency with the approach followed at international level. The draft regulation deals more specifically with information accompanying transfers of funds.

The texts are now ready for submission to a plenary session of the Parliament (next April) for a definite validation. The translations are being organised accordingly.

Even though some countries considered a faster implementation, the latest text of the directive still foresees a two-year timeframe for the translation of the text into the domestic law of the member states.

The regulation will be directly applicable.

BCL Reporting

2. Circular BCL 2015/238 - Introduction of a new statistical reporting on renminbi-denominated operations

On 12 January 2015, the Luxembourg Central Bank published Circular BCL 2015/238 related to the introduction of a new statistical reporting on renminbi-denominated operations.

In accordance to the announcement made at the signing of the Memorandum of Understanding, the BCL will ensure the monitoring of the renminbi market in Luxembourg and will share data with People Bank of China.

To reach this agreement, the Luxembourg Central Bank introduced a new reporting requirement. The new reporting will essentially enable a better monitoring of the evolution of credit institutions' renminbi-denominated loans and deposits. The Luxembourg Central Bank decided to develop a dedicated statistical report rather than integrating the new requirements into the existing statistical reporting framework.

The additional data requirements on renminbi-denominated loans and deposits will be implemented by means of a new report labelled S 1.9 «Information on CNY operations».

These changes must be implemented as of reporting period June 2015.

BRRD

3. Commission Delegated Regulation (EU) 2015/63 with regard to *ex ante* contributions to resolution financing arrangements

On 17 January 2015 the Official Journal of the European Union published the **Commission Delegated Regulation (EU) 2015/63** of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements.

Member States are required to establish resolution financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers. Those resolution financing arrangements

should have adequate financial resources to allow for an effective functioning of the resolution framework and are therefore empowered to raise ex-ante contributions from the institutions authorised in their territory.

This Regulation provides rules specifying ex-ante contributions to resolution financing arrangements.

The methodology of calculation and for the adjustment to the risk profile of institutions, of the contributions to be paid by institutions to resolution financing arrangements.

The obligations of institutions as regards the information to provide for the purposes of the calculation of the contributions and as regards the payment of the contributions to resolution financing arrangements.

The measures to ensure the verification by the resolution authorities that the contributions have been paid correctly.

The Regulation entered into force on 6 February 2015.

CRD IV

4. CRD IV: higher ratio (fix/variable remuneration) notification process for Identified Staff

The **CSSF issued on 13 January 2015 the Circular 15/601** implementing a specific notification process to follow in the situation where the variable component of Identified Staff's total remuneration would exceed the 1:1 ratio.

Based on Article 94(1)(g)(ii) of Directive 2013/36/EU (CRD IV), the variable component of the total remuneration of staff members whose professional activities have a material impact on the risk profile of credit institutions and investment firms ("Identified Staff") shall not exceed 100 % of the fixed component (1:1 ratio).

However, each Member State may allow the concerned entities to approve internally a higher ratio between the fixed and variable components of remuneration, with a maximum of 200%.

Such an approval is subject in Luxembourg to specific conditions, e.g. shareholders' approval, as well as to a notification process formalised by the CSSF in its Circular 15/601 dated 13 January 2015. This notification process enters into force with immediate effect.

CRR

5. CSSF Circular 15/600 - Transposition of the EBA's Guidelines on significant risk transfer for traditional and synthetic securitisations

CSFF published on 7 January 2015 a **Circular providing the transposition of the EBA's Guidelines on significant risk transfer for traditional and synthetic securitisations** relating to Articles 243 and 244 of Regulation 575/2013 on Capital requirements. Articles 243 and 244 of Regulation 575/2013 introduced the principle of significant risk transfer for traditional and synthetic securitisations. EBA's Guidelines provides more details on the evaluation of the significant credit risk transfer.

Originator institutions should provide the competent authority with all requested information of the securitisations on which they intend to demonstrate a significant risk transfer, so that competent authorities can conduct the assessment of significant risk transfer to third parties. That's why, originator institutions are requested to report their Excel « Reporting template for originator institutions on significant risk transfer » in due date to their NCAs.

Originator institutions should at least notify the relevant competent authority of any securitisation on which they intend to demonstrate a significant risk transfer, which is not similar in structure and portfolio composition to previous transactions notified by the institution.

These guidelines entered into force on 7 January 2015.

6. Commission Delegated Regulation (EU) 2015/61 on liquidity coverage requirement for credit institutions

On 17 January 2015 the Official Journal of the European Union published the **Commission Delegated Regulation (EU) 2015/61** of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions.

This Regulation lays down rules to specify in detail the liquidity coverage requirement provided for in Article 412(1) of Regulation (EU) No 575/2013 and shall apply to credit institutions supervised under Directive 2013/36/EU. Investment firms remain subject to the general liquidity requirement under article 412(1) of the CRR, however are not subject to the Regulation.

The Regulation will enter into force as from 1 October 2015 with the following transitional provisions:

a. 60% of the liquidity coverage requirement as from 1 October 2015;

b. 70% as from 1 January 2016;

c. 80% as from 1 January 2017;

d. 100% as from 1 January 2018.

We refer to the Deloitte regulatory news alert: **Delegated regulation on liquidity coverage requirement for credit institutions** we issued on 21 October 2014.

7. Capital Requirement - Commision Delegated Regulation (EU) 2015/62 on Leverage ratio

On 17 January 2015 the Official Journal of the European Union published the **Commission Delegated Regulation (EU) 2015/62** of 10 October 2014 amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio.

This Regulation (EU) amends Article 429, replacing the old one by three new articles organised as following:

1. Article 429 - Calculation of the leverage ratio - gives guidance on how institutions shall calculate their leverage ratio
2. Article 429a - Exposure value of derivatives – specifies the methods for the exposure calculation of derivative products falling in the scope of the leverage ratio
3. Article 429 b - Counterparty credit risk add-on for repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions – specifies the add-on for counterparty credit risk to be included in the exposure calculation.

This Regulation shall apply as from 18 January 2015.

PSD II

8. CSSF publishes 15/603 to enforce EBA guidelines on the security of internet payments

Enforcement of new requirements on the security of internet payments as from 1 August 2015

On 9 February 2015, the **CSSF issued Circular 15/603** titled “Security of internet payments”, which seeks to implement the EBA Guidelines EBA/GL/2014/12 into the Luxembourg regulatory framework.

The guidelines apply to the provision of payment services offered through the internet by Payment Service Providers (PSPs as defined in the Payment Services Directive), in particular banks, payment institutions, electronic money institutions, and post office institutions. In-scope internet payment services include the execution of card payments on the Iinternet, the execution of credit transfers on the Internet, the issuance and amendment of direct debit electronic mandates, and transfers of e-money between two e-money accounts.

As from August 1st, 2015, PSPs shall meet 53 requirements, which constitute harmonised minimum security requirements in the fight against payment fraud and aim to increase consumer trust in Internet payment services. The core recommendation is that the initiation of internet payments as well as access to sensitive payment data should be protected by strong customer authentication to ensure that it is a rightful user, and not a fraudster, initiating a payment. Also, the guidelines encourage to adopt 13 best practices in addition to the above mentioned requirements.

Circular 15/603 describes 53 requirements and 13 recommendations embracing the following topics:

- Governance
- Risk assessment
- Incident monitoring and reporting
- Risk control and risk mitigation
- Traceability
- Initial customer identification, information
- Strong customer authentication
- Enrolment for, and provision of, authentication tools and/or software delivered to the customer
- Log-in attempts, session time out, validity of authentication
- Transaction monitoring
- Protection of sensitive payment data
- Customer education and communication
- Notifications, setting of limits
- Customer access to information on the status of payment initiation and execution.

SRM

9. Council implementing Regulation (EU) 2015/81 with regard to ex ante contributions to the Single Resolution Fund

On 22 January 2015 the Official Journal of the European Union published the **Council Implementing Regulation (EU) 2015/81** of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund.

This Regulation lays down rules specifying the conditions for implementing of the obligation of the Single Resolution Board to calculate the contributions for individual institutions pursuant to Regulation (EU) No 806/2014 to the Single Resolution Fund and the methodology for the calculation of those contributions.

This Regulation applies to the institutions from which contributions are raised in accordance with Article 70 of Regulation (EU) No 806/2014.This Regulation provides information to the Board, on how to calculate the annual contributions, how to communicate to the relevant national resolution authorities.

This Regulation also addresses the call of irrevocable payment commitments and the specific adjustments in the initial period.

The Regulation entered into force on 23 January 2015.

SSM

10. CSSF Circular 15/602 – Documents to be submitted for banks on an annual basis

On 15 January 2015, the CSSF published the **CSSF Circular 15/602** on documents to be submitted on an annual basis adressed to all credit institutions. The purpose of this circular is to provide new rules and deadlines concerning the various documents to be submitted annually.

The procedure differs depending on the category of the entity:

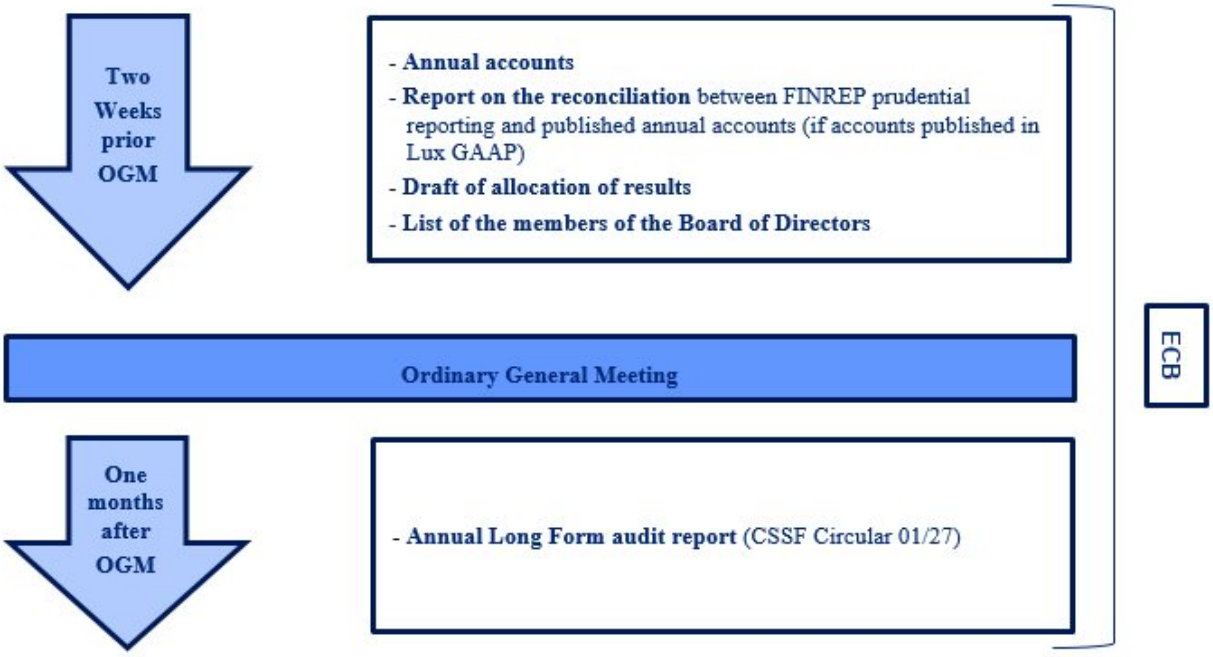
1. "Significant supervised entity" and "significant supervised group" as defined in Article 2, points (16) and (22) of the SSM Framework Regulation.
2. "Less significant institutions" in accordance with Article 6(4) of the SSM Regulation.
3. Branches of EU credit institutions
4. Branches of non-EEA credit institutions.

These categories are defined by the European Central Bank (ECB) and the concerned entities that are classified in the **list of significant supervised entities and the list of less significant institutions**, published by the ECB on 04/09/2014 (last update).

1. Significant Institutions

For clarifications about the scope please refer to point 5 a)

Documents to be adressed directly to the ECB



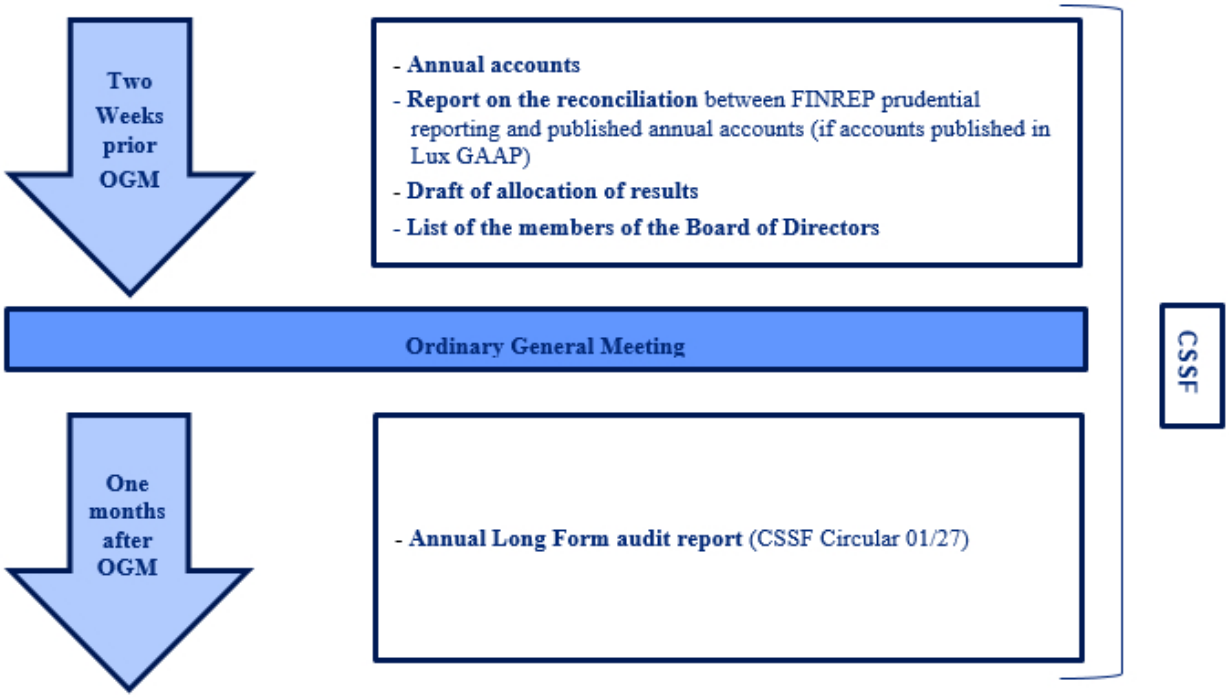
Documents to be submitted by 30 March:

- ICAAP report (CSSF Circular 07/301)
- Summary report drown up by the internal auditor (CSSF Circular 12/552 as amended)
- Annual report of the compliance officer (CSSF Circular 12/552 as amended)
- Summary Report of the risk control function (CSSF Circular 12/552 as amended)
- Confirmation by the authorised management of compliance with the CSSF Circular 12/552 as amended by CSSF Circulars 13/563 and CSSF 14/597

- Confirmation by the authorised management of compliance with the Circular CSSF 13/555

2. Less significant institutions

Documents to be addressed to the CSSF



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- ICAAP report (CSSF Circular 07/301)
- Summary report drown up by the internal auditor (CSSF Circular 12/552 as amended)
- Annual report of the compliance officer (CSSF Circular 12/552 as amended)
- Summary Report of the risk control function (CSSF Circular 12/552 as amended)
- Confirmation by the authorised management of compliance with the CSSF Circular 12/552 as amended by CSSF Circulars 13/563 and CSSF 14/597
- Confirmation by the authorised management of compliance with the CSSF Circular 13/555

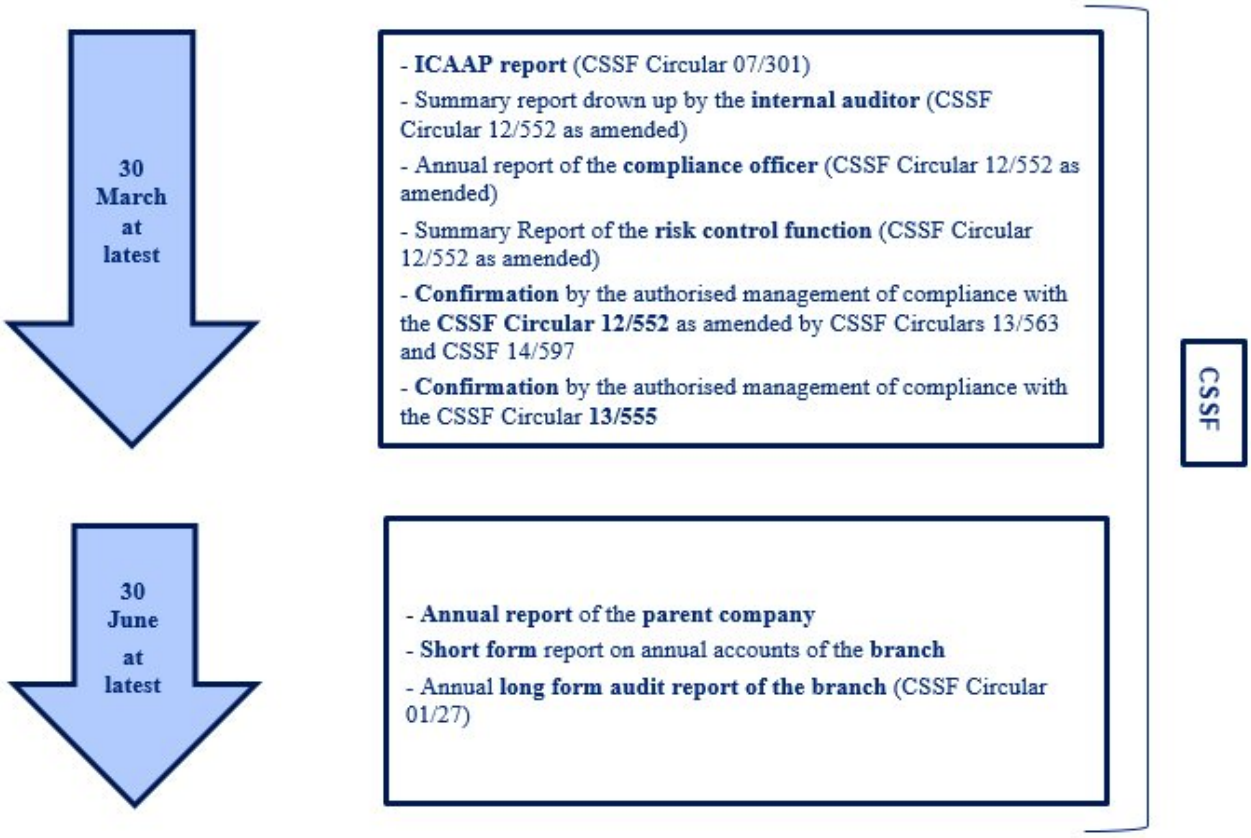
3. Branches of EU credit institutions

Documents to be addressed to the CSSF by 30 June at the latest

Report by the external auditor with regards on specific subjects, like compliance with the rules on the prevention of money laundering and compliance with conduct of business rules.

4. Branches of non-EEA credit institutions

Documents to be addressed to the CSSF



5. Clarifications from the CSSF regarding the CSSF Circular 15/602

a) All Luxembourg entities that are subsidiaries of a major banking group under direct supervision by ECB are significant institutions as defined in point 1 of CSSF Circular 15/602.

b) For credit institutions for which the Board meeting is scheduled after the deadline of 30 March, the reports detailed in points 1.2 and 2.2 of the Circular can be submitted on 30 March to the CSSF without a formal approval of the board of directors. The CSSF considers that the board of directors has not to approve the content of these reports, but only to take them into account.

c) For the delivery of documents relating to subsidiaries falling within the scope of supervision on a consolidated basis, the CSSF does not set a specific date, however, the CSSF reserves the right to request reports, if she considers that the reasonable time is exceeded.

Statutory Reporting

11. Banks Distributable results and reserves

In case of use of fair value method for the statutory accounts or the IAS/IFRS accounting standards

On 9 January 2015, the CSSF published Regulation N°14-02 relating to the determination of distributable results and reserves of credit institutions when using the fair value method for the statutory annual accounts (Mémorial A – N°4). This regulation is applicable from the period ended 31 December 2014.

Limitation to the distribution of unrealised results and reserves

The following provisions are applicable to credit institutions using the fair value option (Chapter 7bis, Part II of the Law of 17th June 1992, “the Law” hereafter) or the IAS/IFRS accounting standards (Part II bis of the Law) for statutory annual accounts.

The following items cannot be distributed:

- Unrealised gains recorded in the profit and loss account;
- Unrealised gains recorded in own funds which does not pass through the profit and loss account;
- Positive variation in own funds recognised in the “first-time application” balance sheet established in accordance with Part II bis of the Law.

These elements must be affected directly to an unavailable reserve or indirectly during the allocation of the fiscal year’s income. The following uses of the unavailable reserve are forbidden:

- Capital increase by capitalisation of reserves;
- Transfer to legal reserve;
- Set-up of non-distributable reserve relating to the acquisition of own shares;
- Set-up of non-distributable reserve relating to the granting of financial assistance for the acquisition of company’s shares by a third party;
- Set-up of the non-distributable reserve relating to the issue of redeemable shares;
- Determination of the loss amounting to half or three quarters of the share capital;
- Special reserve pursuant to paragraph (8a) of the Law of 16 October 1934 on wealth tax.

By exception, the following items are not considered as unavailable and can be distributed or used:

- Unrealised gains related to financial instruments held in trading portfolio;
- Unrealised gains related to foreign exchange and hedge accounting;
- Reversal of value adjustment in the context of the “first-time application” balance sheet established in accordance with Part II bis of the Law (excluding amortisation, lump-sum and AGDL).

If net annual results are below unrealized results, the unavailable reserve will be constituted by using the available reserves or, by default, imputing on the reported results.

Deferred tax liabilities under the regime of the fair value option

Credit institutions using the fair value option in the statutory financial statements (Chapter 7bis, Part II of the Law) shall recognise deferred tax liabilities, if the gain related to the fair value appreciation of an eligible asset or liability will be subject to taxation during its realisation.

We trust this information is of assistance and remain at your disposal for any further questions.

Supervisory Reporting

12. Commission Implementing Regulation (EU) 2015/79 on asset encumbrance, single data point model and validation rules

On 21 January 2015 the Official Journal of the European Union published the **Commission Implementing Regulation (EU) 2015/79** of 18 December 2014 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council as regards asset encumbrance, single data point model and validation rules.

The main change results in the insertion of a new article (Chapter 7a – article 16a) dealing with the format and frequency of Reporting on asset encumbrance in accordance with Article 100 of Regulation (EU) No 575/2013 on an individual and a consolidated basis (see Annex XVI for the specified information and Annex XVII for the instructions).

In addition, Articles 17, 18 and 19 have been modified as follow:

- Article 17 has been simplified with the withdrawn of the second paragraph of the Regulation (EU) 680/2014 concerning additional information to be provided by financial insitutions. Minor changes have been operated in the terminology used, replacing “a data point model” by “ a signle data point model” and “validation formulae” by “validation rules”
- Article 18 has been amended to specify the first reporting reference date (31 December 2014) for the information to be reported pursuant to Article 16a,
- Article 19 has been amended to specify the date (1 December 2014) as from which the Article 16a shall apply.

This Regulation entered into force on 10 February 2015.

13. Clarifications for investment firms in CSSF Circular 15/606

Draft Law 6660 the purpose of which is, among others, to implement within Luxembourg law Directive 2013/36/EU (hereinafter "CRD IV") will introduce a sub-category of investment firms in the Law of 5 April 1993 on the financial sector (“LFS"), the "investment firm CRR", which will fall within the scope of Regulation (EU) No 575/2013 (“CRR”), ITS on Supervisory Reporting and will be required to comply with, among others, the new requirements of the CRD IV for supervision on a consolidated basis, governance and remuneration policy.

Investment firms CRR

The following criteria are to be used to determine whether an investment firm falls within the scope of the CRR or not:

Out of scope

If	authorised only for the following investment services and activities (point 1, 2, 4 and 5 of Section A in Appendix II of the LFS)	1. Reception and transmission of orders in relation to one or more financial instruments 2. Execution of orders on behalf of clients 4. Portfolio management 5. Investment advice
and		
If	not authorised for the following ancillary service (point 1 of Section C in Appendix II of the LFS, “ancillary service 1”)	1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management

In scope

If	authorised for the ancillary service 1	1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management
or		
If	authorised for one or more of the following investment services and activities (point 3, 6, 7 and 8 of Section A in Appendix II of the LFS)	3. Deadling on own account 6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis 7. Placing of financial instruments without a firm commitment basis 8. Operation of Multilateral Trading Facilities (MTF)

"Holding" of assets belonging to clients

The CSSF draws also attention to the concept of "holding" of assets belonging to clients and to the need to maintain or obtain an authorisation as a service provider of ancillary service 1.

Each investment firm which holds assets belonging to its clients, in accordance with the definition of CSSF Circular 15/606, must have an authorisation as a provider of ancillary service 1 and will therefore always be considered as investment firm CRR.

As an example, investment firms which open accounts in their own name with a third party on behalf of their clients (whether collective ("omnibus accounts") or individual accounts) are considered as holding of assets belonging to clients.

CSSF Circular 15/606 should be read along with CSSF Circular 13/575 on Supervisory reporting requirements applicable to investment firms as from 2014.

14. Large exposures - CSSF FAQ

The **FAQ issued by the CSSF on 23 January 2015** addresses two issues in relation to notification threshold for information relating to large exposures applicable at individual level.

The questions are about specifications introduced by CSSF Circular 14/593 on Supervisory reporting requirements applicable to credit institutions as from 2014 and more specifically by point 9.

The first question deals with the distinction that must be done between risks taken on “institutions” and risks taken on “clients other than institutions”.

For risks taken on “Institutions” the bank should notify all risks taken on the same client (or a group of connected clients), where the amount is greater than or equal to the lower of the two following amounts:

- 10% of own funds or
- EUR 25 million for risks taken on "institutions”.

For risks taken on “clients other than institutions” the bank should notify all risks taken on the same client (or a group of connected clients), where the amount is greater than or equal to the lower of the two following amounts:

- 10% of own funds or
- EUR 12,5 million for risks taken on "clients other than institutions”.

The second answer confirms that the thresholds mentioned in point 9 of the CSSF Circular 14/593 is only applicable at individual level.

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