

Deloitte regulatory news alert

CSSF Circular 2002/77



CSSF Activity Report 2013

The CSSF Activity report 2013 includes additional information regarding the application of CSSF Circular 2002/77 to Specialised Investment Fund (“SIF”), as well as the use of the “economical” method in the context of the determination of the compensation to the investors of a fund.

Application of CSSF Circular 2002/77 to SIFs

The CSSF Activity report has clarified that the CSSF Circular 2002/77 does not apply in principle to SIFs. However, the CSSF considers that SIFs can either opt to apply the tolerance thresholds of the CSSF Circular 2002/77 or set up other internal tolerance thresholds that are reasonable with regards to the investment policies of the SIFs.

SIFs that do not set up other internal tolerance thresholds are by default bound to the tolerance thresholds of the CSSF Circular 2002/77.

In both cases (that is whether the tolerance thresholds of the CSSF Circular 2002/77 or internal tolerance thresholds are applied), all net asset value calculation errors and non - compliance with investment policies of the SIFs should be notified to the CSSF.

In that context, the governing bodies of the SIFs are responsible to determine and document the internal tolerance thresholds to be applied. This is particularly relevant for SIFs that have “alternative” investments, strategies and leverage, as the tolerance limits of the CSSF Circular 2002/77 are set up for funds that generally have investments in transferable securities.

“Economical” method

The CSSF reminds that in conformity with CSSF Circular 2002/77, in the case of non-compliance with investment policies, the “damage must be determined in principle by reference to the loss of the UCI resulting from the realisation of the non-authorized investments.... By exception to the preceding principle and to the extent there is adequate justification therefore, methods other than those described above may be used to determine the suffered damage including in particular the method which consists in determining the damage by reference to the performance which would have been realised if the non-authorized investment had been subject to the same fluctuations as the portfolio invested in compliance with the investment policies and the investment restrictions provided for by law or the prospectus”.

Such a comparative performance is commonly known as “economical” method and is acceptable only if the method is exclusively in the interest of the investors and is in accordance with the investment policies of the fund as described in the issuing document of the fund.

The prospectus may refer to such method and to a relevant benchmark. In cases where the prospectus does not refer to a relevant benchmark and the “economical” method is chosen, the selected benchmark should reflect fairly the investment policies of the fund.

The method chosen has to be maintained to ensure consistency in the treatment of the non - compliance with investment policies. The CSSF expects that the management companies and investment managers have documented internal procedures with respect to the treatment of non- compliance with investment policies. The procedures have to include among others for each fund and preferably at the launch of the fund the choice of method for the determining the compensation, and including the benchmark to be used once the decision of using the economical method has been made.

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

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