

## UPDATE OF CSSF FAQs ON SWING PRICING USED BY LUXEMBOURG REGULATED FUNDS IN THE CONTEXT OF COVID-19

On 7 April 2020, the Luxembourg financial sector supervisory authority ("CSSF") published an update of its FAQs on the swing pricing mechanism (as initially published in July 2019 and amended on 20 March 2020) in relation to the application and use of the swing pricing and dilution levy mechanisms by Luxembourg regulated UCITS, Part II UCIs and SIFs (together "UCIs") further to the questions received from industry participants in the context of the financial market developments around COVID-19. This last update includes CSSF's clarifications in terms of investors information in case of increase of the swing factor/dilution levy by UCIs beyond the maximum level laid down in the prospectus.

### Concerned entities

Luxembourg UCITS, Part II UCIs and SIFs

*This briefing speaks as of 10 April 2020.*

### Increase of swing factor/dilution levy by UCIs up to the maximum level laid down in the prospectus

The CSSF confirms that UCIs can increase the swing factor/dilution levy up to the maximum level laid down in the relevant UCI's prospectus without prior notification to the CSSF.

### Increase of swing factor/dilution levy beyond the maximum level laid down in the prospectus

The CSSF clarifies that, when the prospectus formally provides for such possibility, the management body of UCIs, or their management company (as applicable), may increase the applied swing factor/dilution levy beyond the maximum percentage laid down in the relevant UCI's prospectus on a temporary basis and in accordance with the provisions of the prospectus, provided that such a decision:

- (i) is duly justified;
- (ii) is the result of a robust internal governance process and is based on a robust methodology (including market/transaction data based analysis) that provides for an accurate NAV which is representative of prevailing market conditions;
- (iii) takes into account the best interest of the investors; and
- (iv) is communicated to the relevant UCI's current and new investors through the usual communication channels as laid down in its prospectus (such as the ordinary notice to investors, through the UCI's internet website or other ways as disclosed in the prospectus).

The CSSF further clarifies that, given the current exceptional market circumstances involved by the COVID-19, the above position is also applicable, on a temporary basis, in the case where the prospectus does not formally provide for such possibility to apply the swing factor/dilution levy beyond the maximum level laid down in the prospectus. In this case, in addition to the conditions mentioned under points (i) to (iv) above, the UCI's prospectus will have to be updated at the earliest convenience in order to formally provide for such a possibility to go beyond the maximum level under certain predefined conditions. Moreover, the appropriate communication to the relevant UCIs' investors (referred to under point (iv) above) must be made before applying the increased swing factor beyond the maximum level laid down in the prospectus and a copy of this communication must be provided simultaneously to the CSSF.

In case of application of a higher percentage swing factor/dilution levy than the one provided for in the UCIs prospectus, the CSSF has also to be provided with a detailed notification of the relevant UCI's decision to increase the applied swing factor/dilution levy beyond the maximum percentage laid down in its prospectus, including a specific explanation on the reasons for such a decision. Moreover, for a swing factor adjustment going beyond the maximum swing factor laid down in the UCI's prospectus in force, the CSSF may also ask the UCI to justify, on an ex-post basis, the level of the swing factor applied and to provide documentary evidence that such factor was at any time representative of the prevailing market conditions.

### **Consolidated version of CSSF FAQs on swing pricing mechanism**

The above clarifications by the CSSF have been consolidated in the existing CSSF FAQ<sup>1</sup> on swing pricing mechanism as well as in the specific CSSF FAQ on Covid-19 (available in the CSSF website). Please also refer to the relevant section of the October 2019 issue of our Legal Update<sup>2</sup> for further information on the concept of swing pricing and on the conditions to be complied with by UCIs to use swing pricing according to the CSSF regulatory practice.

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<sup>1</sup> [http://www.cssf.lu/fileadmin/files/Metier\\_OPC/FAQ/FAQ\\_Swing\\_Pricing\\_Mechanism\\_070420.pdf](http://www.cssf.lu/fileadmin/files/Metier_OPC/FAQ/FAQ_Swing_Pricing_Mechanism_070420.pdf)

<sup>2</sup> <https://www.cliffordchance.com/content/dam/cliffordchance/PDFDocuments/October%202019%20-%20Legal%20Update.pdf>

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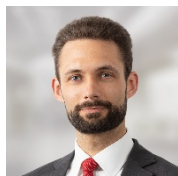
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