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LUXEMBOURG FINANCIAL SECTOR REGULATOR RESPONDS TO THE CORONAVIRUS PANDEMIC

The CSSF has issued a number of press releases and published specific Circulars and FAQs to clarify certain measures taken in light of the Covid-19 pandemic.

UPDATE 27 APRIL – 22 JUNE 2020

Over the past weeks, the CSSF has:

- **Issued, together with the BCL, a Communiqué on ESRB's Covid-19 related policy actions regarding implications for investments funds**

  With this communiqué, the CSSF and the BCL remind industry participants that the European Systemic Risk Board (ESRB) has discussed beginning of May 2020 a first set of policy actions in 5 priority areas identified to address the impact of Covid-19 on the financial system from a macroprudential perspective. These actions constitute a comprehensive set of policy measures that apply to different sectors of the financial system as well as across countries, and address the areas of market illiquidity, downgrades of corporate bonds, guarantee schemes and other fiscal measures, dividend payment restraints and margin call induced liquidity risks.

  In their communiqué, the CSSF and BCL draw particular attention to the following ESRB's policy actions that are related to and have implications for investment funds and their activities:

  – ESRB's recommendation of 6 May 2020 on liquidity risks in investment funds, in which the ESRB has recommended that ESMA coordinates with national competent authorities to undertake a focused piece of supervisory engagement with those investment funds having significant exposures to corporate debt and real estate assets;

  – ESRB's public statement of 13 May 2020 on the use of liquidity management tools by investment funds with exposures to less liquid assets, in which the ESRB has emphasized the importance of the availability and timely use of liquidity management tools by fund managers, especially in times of stressed market conditions; and

  – ESRB's issues note of 11 May 2020 on liquidity in the corporate bond and commercial paper markets, the procyclical impact of downgrades and implications for asset managers and insurers, in which the ESRB has examined how large-scale downgrades of corporate bonds can have an impact on the broader financial sector with the objective of

Latest updates

- **19 June 2020** : Update of the CSSF FAQ on Covid-19 concerning the postponement of certain data collections for banks and investment firms.
- **19 June and 14 May 2020**: CSSF Communiqués on telework and possible return to the office for supervised entities.
- **5 June 2020**: CSSF and BCL Communiqué on ESRB's Covid-19 related policy actions regarding implications for investments funds
- **13 May 2020**: Launch of IFM Notification Form on fund issues and large redemptions via CSSF eDesk portal.
- **13 May 2020** : Update of the CSSF FAQ on Covid-19 concerning the extension of certain deadlines for specialised PFSs and suspension of the reporting Early Warning on large redemptions for UCITS.
- **8 May 2020**: Update of the CSSF FAQ on Covid-19 concerning the extension of deadlines for the reports to be submitted by credit institutions.
- **4 May 2020**: CSSF Communiqué on AML/CFT supervision in the collective investment sector during the Covid-19 situation.
- **30 April 2020**: CSSF Circular 20/741concerning the adoption of EBA Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the Covid-19 crisis (EBA/GL/2020/02).
- **29 April 2020**: Update of the CSSF FAQ on Covid-19 concerning the prudential treatment of payment moratoria.

This briefing speaks as of 22 June 2020.

assisting policymakers to better evaluate the risks associated with downgrades including the negative impact they could, among other disruptive effects, have, via/through the potential sale of such assets by financial institutions on market liquidity, particularly in the high yield corporate debt segment.

- **Issued two new communiqués on 14 May and 19 June concerning the measures to be taken, or that should continue to be applied, by supervised entities in the context of a return to the office further to the easing of the Covid-19 lockdown by the Luxembourg government**

  With these communiqués, the CSSF outlines that this not yet the end of the Covid-19 pandemic and that, given the number of staff directly employed in financial services, supervised entities have to remain extremely careful when considering allowing the return to the office, so as to avoid a second wave of infection and to ensure business continuity.

  Mid-May 2020, the CSSF had recommended that supervised entities should:

  – continue teleworking (wherever possible), limit the return to the workplace to a minimum (e.g. when tasks cannot be performed remotely), and continue to organise and hold external meetings by video or audio conferencing rather than by physical meetings; and

  – establish strict staff health protection guidelines in writing for the cases where staff is allowed to return to the office, which guidelines should be discussed and published to all staff and should address the recommendations and parameters as further detailed by the CSSF in its communiqué.

  Further to the additional measures for the easing of the lockdown announced by the Luxembourg government, the CSSF has specified mid-June 2020 that supervised entities should, *inter alia*, also apply the following measures in the context of a return to the office of their employees and external service providers:

  – identify their vulnerable employee(s) and define the applicable protection measures as well as implement rules to avoid that people infected by or suspecting of being infected by the Covid-19 return to the office;

  – define the organisational rules and procedures with respect to the internal and external meetings, the reception of visitors and the restaurant, coffee and meeting areas;

  – organise specific cleaning or disinfection of office areas and equipment, and display barrier gestures, such as those published by the Luxembourg government at https://msan.gouvernement.lu/dam-assets/covid-19/fiches_information/en/Fiche-GB-EN.pdf

  The above recommendations will be reviewed by the CSSF depending on the evolution of the Covid-19 pandemic and the recommendations of the Luxembourg government.

- **Issued a communiqué concerning the launching of a new online notification form on fund issues and large redemptions (IFM Notification Form) to be completed and submitted by investment fund managers via CSSF eDesk portal**

With this IFM Notification Form, the CSSF extends the scope of the specific monitoring and notification process of significant developments and issues that had already been implemented on 10 March 2020 over the largest investment fund managers (IFMs), in view of the specific circumstances and risks to which these companies were exposed to as a result of the prevailing market conditions, to a wider number of IFMs and further integrates the related notification process into its eDesk portal.

All concerned IFMs should have been specifically contacted by the CSSF and are now required to complete and submit the IFM Notification Form to the CSSF via the eDesk portal only if the following events occur:

– significant fund events/issues affecting Luxembourg and/or non-Luxembourg regulated and/or non-regulated funds (as applicable) managed by the relevant Luxembourg or non-Luxembourg based IFMs as a result of the current period of market turbulence (e.g. liquidity issues on the asset side, significant valuation challenges, etc.); and/or

– larger redemptions at the level of Luxembourg regulated UCIs, Part II UCIs and SIFs managed by the IFMs (i.e. daily net redemptions exceeding 5% of the NAV, net redemptions over a calendar week exceeding 15% of the NAV and/or application of gates/ deferred redemptions).

In order to give IFMs sufficient time to prepare, the IFM Notification Form applies as from 2 June 2020, and the CSSF expects to be notified about significant fund events/issues respectively larger redemptions on a t+2 basis after the NAV date t. Further details on the IFM Notification Form, the scope of application and additional explanations assisting IFMs in filling in the notification are outlined in the dedicated section of the CSSF eDesk Portal and in the in the User Guide on the IFM Notification Form.

- **Updated its FAQs on Covid-19**

– With respect to specialised PFSs, the CSSF has indicated that the extension of deadlines for the submission of usual closing documents may, where appropriate, be exceptionally granted upon reasoned request to be sent to the CSSF. Furthermore, for the management letter and the audit report of the *réviseur d'entreprises agréé* (prepared pursuant to CSSF Regulation N° 12-02), an extension of up to three months following the initial date of the ordinary general meeting is possible. The CSSF however encourages timely submissions, where the submission can be made within the usual time limits without compromising the quality of the submitted documents and in line with the health rules to contain the spread of Covid-19.

– With respect to UCITS, the CSSF has clarified that the reporting Early Warning on large redemptions, which is only relevant for a limited number of UCITS that have, in the past, been contacted directly by the CSSF, is now suspended until further notice following the introduction of the “IFM Notification – Fund issues/Large redemptions".

– With respect to credit institutions, the CSSF has provided clarifications on the extension of deadlines for the submission of certain reports. The CSSF has informed credit institutions that it is following the EBA statement of 31 March 2020 on the postponement of the remittance dates in certain areas of supervisory reporting (i.e. ITS on supervisory reporting and ITS on supervisory benchmarking) that fall between March and end of May 2020. The CSSF has stressed that banks may therefore delay the submission of their supervisory data by one month for remittance dates between March 2020 and end of May 2020 and that information on funding plans can be delayed by two months. The postponement of the remittance dates is however not applicable for the reporting of the LCR and ALMM templates, as such supervisory information is a priority for monitoring closely institutions' financial and prudential situation.

  – With respect to credit institutions and investments firms, the CSSF has indicated that (i) the EBA data collection exercise regarding high earners and data collection for its remuneration benchmarking exercise are postponed by three months (i.e. to be provided by 30 September at the latest) and that (ii) the data collection for the remuneration benchmarking exercise at national level is postponed by one month (i.e. to be provided by 30 October at the latest).

- **Issued a communiqué concerning the AML/CTF supervision in the collective investment (CIS) sector during the Covid-19 situation**

  The CSSF has recalled the publication of its Circular 20/740 of 10 April 2020 that provides information and guidance to all professionals under AML/CTF supervision of the CSSF (thus including regulated investment funds and their managers) in relation to the money laundering and terrorism financing (ML/TF) risks and AML/CTF implications of the Covid-19 pandemic.

  With this communiqué, the CSSF has also released a PowerPoint presentation designed to complement Circular 20/740 with CIS sector specific details and examples, namely as regards the Covid-19 ML/TF threats and vulnerabilities, the Covid-19 typologies and red flags and the implementation of tailor-made mitigation measures by CIS entities. This presentation outlines the conclusion of the Expert Working Group AML OPC chaired by the CSSF and composed of representatives of several fund industry associations (such as the Association of the Luxembourg Fund Industry (ALFI)) as well as service providers and the Financial Intelligence Unit (FIU). For further details on the Circular 20/740, please see our briefing on financial crime and AML/CTF implications during the Covid-19 pandemic.

- **Issued a new Circular 20/741 and updated its FAQs on Covid-19 to provide clarifications on the prudential treatment of private moratoria in Luxembourg**

  The CSSF has informed credit institutions in its Circular 20/741 that it complies with and applies the EBA guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the Covid-19 crisis (EBA/GL/2020/02) and that it has integrated them into its administrative practice and regulatory approach. The CSSF has also provided additional clarifications in this context in its FAQs on Covid-19. These are described in further details in our briefing on prudential treatment of payment moratoria in Luxembourg.

OVERVIEW OF PREVIOUS MEASURES

Measures to be taken by CSSF Supervised Entities

In summary, the CSSF urged all entities under its supervision to:

- take reasonable and appropriate security measures to protect their personnel; for example, by prioritising working from home as part of their business continuity plans over other forms of working, including working from backup centres (no prior CSSF authorisation is needed for such work arrangements);
- remain vigilant with respect to risks relating to fraud and IT security;
- guarantee satisfactory IT security conditions for remote access (including high privileged access, encrypting communication channels, carrying out connection monitoring and limiting the duration of such remote access); and
- contact the CSSF as soon as possible ahead of reporting deadlines where supervised entities experience difficulties in preparing or validating their CSSF reporting.

Further clarifications by the CSSF

Asset Managers

On the asset managers side, the CSSF has:

- launched a new online questionnaire with weekly updates to the CSSF on financial data and governance arrangements in relation to the activities performed by certain investment fund managers in view of the specific circumstances and risks which they are exposed to during the Covid-19 pandemic. These are described in further detail in our briefing on new CSSF online weekly questionnaire for fund managers;
- informed that Luxembourg regulated UCITS, Part II UCIs and SIFs can increase the swing factor to be applied on the NAV up to the maximum level set out in the relevant UCI's prospectus without prior notification to the CSSF (and, on a temporary basis, subject to certain conditions being fulfilled, beyond such level). This is described in further detail in our briefing on CSSF FAQs on swing pricing mechanism used by Luxembourg regulated funds in the context of Coronavirus; and
- clarified its expectations in case of breaches by a UCITS of the regulatory VaR limit (i.e. 20% for the absolute VaR or 200% for the relative VaR) or of any other more restrictive internal VaR limit as laid down in the UCITS' prospectus. The CSSF indicated *inter alia* that:
  - Breaches of the regulatory or internal VaR limit by UCITS, which occur as a result of the increase of volatility in financial markets, may be considered as passive breaches (i.e. breaches beyond the control of the relevant UCITS or of its managers) provided that there are no new positions taken by the UCITS which increase the overall level of risk of its portfolio.
  - Such passive breaches do not have to be notified to the CSSF and do not preclude the UCITS' manager from continuing to manage the UCITS (e.g. concluding investments following subscriptions). The relevant UCITS' manager should nevertheless take appropriate steps to meet the VaR limit within a reasonable time period by taking into account the prevailing market conditions and the best interests of the UCITS' investors.
  - Active breaches, however, have to be notified to the CSSF at opc.prud.sp@cssf.lu together with some minimum information as further detailed by the CSSF in the FAQs on Covid-19s. For the

avoidance of doubt, UCITS' managers will also have to take appropriate actions to regularise the situation of the UCITS in case of an active breach of the VaR limit.

Cloud-based tools and solution

The implementation of cloud-based tools and solutions does not require prior authorisation by, or notification to, the CSSF as long as the exceptional situation lasts (simple communication to the CSSF by email being sufficient);

Banks' dividend distributions

The CSSF stated that it intends to comply with the recent ECB's Recommendation on dividend distributions during the Covid-19 pandemic and the EBA's Statement on dividends distribution, share buybacks and variable remuneration and provided additional guidance on the actions to be taken by the Luxembourg credit institutions in this context. These are described in further detail in our briefing on CSSF guidance on banks' dividend distributions;

AML/CTF

The CSSF further published a Circular CSSF 20/740 to provide guidance to all professionals under AML/CTF supervision of the CSSF in relation to the money laundering and terrorism financing risks and AML/CTF implications of the Covid-19 pandemic, which is described in further details in our briefing on financial crime and AML/CTF implications during the Covid-19 pandemic.

Flexibility allowed to banks by the IFRS 9 accounting framework

The CSSF described the flexibility allowed to banks by the IFRS 9 accounting framework to address the temporal impact of adverse economic conditions linked to the Covid-19 pandemic. The CSSF has *inter alia*:

- reflected the statements, recommendations and guidance issued by EBA, ESMA, ECB, and IASB in the course of March 2020 and described in particular the flexibility offered by IFRS 9 to mitigate volatility in the banks' regulatory capital, financial statements and reporting obligations regarding the Covid-19 pandemic;
- informed banks that, while they are encouraged to use such flexibility when preparing their accounting and risk statements, they are required to (i) continue to apply sound and prudent risk management (inter alia with respect to the potential crystallisation of Covid-19 related risks), and (ii) monitor key financial statements and regulatory metrics under the assumption that the flexible treatment for such exposures is no longer warranted;
- provided guidance on how banks should address the procyclicality in IFRS 9 by setting a list of suggestions to be considered, in particular when assessing the Significant Increase in Credit Risk and estimating the Expected Credit Loss; and
- highlighted the possibility for banks to use the transitional arrangement related to the IFRS 9 implementation within the CRR, subject to prior authorisation by the CSSF. The CSSF suggests such practice even when banks have decided not to use it at the initial application of IFRS 9.

Transparency Law and Market Abuse Regulation

The CSSF stressed to issuers and holders of securities that particular attention should be paid to compliance with ongoing requirements set by the Luxembourg Transparency Law and Market Abuse Regulation (notably the disclosure of inside information and notification and publication of major holdings and managers' transactions) and that the issuers anticipating their financial reports to be delayed should inform the market thereof.

Clarifications on measures to alleviate the impacts of Covid-19 for Less Significant Institutions (LSIs).

The CSSF explained that LSIs will be able to benefit from identical measures as those decided by the ECB for Significant Institutions (e.g. partial use of capital instruments that do not qualify as Common Equity Tier 1 (CET1) capital to meet the Pillar 2 requirements).

However, by contrast to the ECB's decision on relief measures regarding the operational aspects of supervision (such as deadlines for remedial actions imposed in the context of on-site inspections), an extension of a deadline will only be granted to LSIs upon submission of a reasoned Covid-19 related request in order to keep supervision at a normal level, as far as justified, given Covid-19.

The CSSF further stressed that branches in Luxembourg of credit institutions having their head office in a third country may benefit, where applicable, under the same conditions, from the flexibility measures offered to LSIs.

Extension of regulatory deadlines

In the context of regulatory deadlines, the CSSF further specified that:

- FGDL (Fonds de garantie des dépôts Luxembourg) members may choose to delay the reporting on the amount of covered deposits held on 31 March 2020 and submit the data requested under the Circular CSSF-CPDI 20/20 together with the 2020 2nd quarter-end data;
- the remittance date for the information to be submitted to the CSSF (in its function as resolution authority) under the Commission Implementing Regulation (EU) 2018/1624 is extended until 29 May 2020; such extension does not however apply to templates relating to the concerned institution's liability structure, own funds requirements and intragroup financial interconnections (relevant for institutions under the CSSF's direct remit) which are expected to be reported by 30 April 2020 at the latest;
- it will not prioritise its supervisory actions towards counterparties, entities responsible for reporting and investment firms in respect of their reporting obligations pursuant to SFTR or MiFIR, regarding (i) SFTs concluded between 13 April 2020 and 13 July 2020, and (ii) SFTs subject to backloading under SFTR. The CSSF will monitor the evolution of the SFTR implementation by the relevant market participants and expects them to be sufficiently prepared ahead of the next phase of the reporting regime, i.e. 13 July 2020 in order to start reporting as of this date;
- supervised entities may exceptionally remit long form reports up to four months after their annual general meetings, excluding delays for such meetings granted by the Luxembourg government through exceptional measures (i.e. both delays should not be applied cumulatively);
- deadlines for the submission of certain reports, questionnaires and other documents on a periodical basis (listed in the CSSF FAQs on Covid-19s)

may be extended (or suspended in certain cases until further CSSF notice):

- exceptionally and upon reasoned request to be sent to the CSSF, as regards banks, investment firms, specialised PFS, support PFS, payment and e-money institutions; and
- provided that the CSSF is informed thereof, for UCIs, SIFs, SICARs, investment fund managers, pension funds and securitisation undertakings;

- upcoming deadlines for the publication of periodic information by issuers of securities are subject to a two-month extension (for reporting periods ending on 31 December 2019 or after that date but before 1 April 2020);
- it will not apply a strict enforcement policy with respect to reporting if delays are duly justified during the Covid-19 pandemic; and
- it will not take any administrative measures or sanctions in relation to issuers' failure to comply with a timely publication of periodic information.

The CSSF further confirmed that it intends to comply with ESMA Public Statement of 9 April 2020 concerning the deadlines applicable under the UCITS and AIFM Directives for the publication by investment fund managers of the annual and half-yearly reports of the UCITS and AIFs that they manage. Considering that investment fund managers may be prevented from fulfilling the UCITS and AIFMD deadline requirements due to Covid-19, the CSSF is thus complying with ESMA's recommendation not to prioritise its supervisory actions regarding annual reports of UCITS and AIFs with year-end after 31 December 2019 and before 1 April 2020 for a period of two months following the relevant deadline. A one month extension will apply similarly to annual reports of UCITS and AIFs with year-end 30 April 2020 and before 1 May 2020 and half-yearly reports of UCITS AIFs with year-end after 31 January 2020 and before 1 April 2020. Investment fund managers, which expect the relevant reports to be published beyond the regulatory deadlines, must promptly inform the CSSF and must also inform the investors as soon as practicable.

COMMUNICATION WITH THE CSSF

All communication with the CSSF should be carried out either through the eDesk portal or by email/telephone, instead of, or in addition to, regular mail.

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