

## Relaying the news

### Luxembourg investment funds newsletter

15 September 2021 – 15 January 2022



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## eDesk performance fee declaration for the IFMs

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On 22 September 2021, the CSSF published a [communiqué](#) inviting Investment Fund Managers (“**IFMs**”) to use a new dedicated [eDesk](#) application to declare the performance fee models applicable to the Luxembourg UCITS or AIF they manage.

The eDesk application is aimed at ensuring compliance with the European Securities and Markets Authority’s (“**ESMA**”) [Guidelines on performance fees applicable to UCITS and certain types of AIFs](#) (the “**Guidelines**”).

For funds whose financial year ended between July 2021 and December 2021, the form has been available since 30 September 2021. From January 2022, the form must be used for funds with financial years ending between January 2022 and June 2022. The deadline for submission of initial declarations is the corresponding closing date of each fund as further specified in the IFM’s performance fee eDesk dashboard.

IFMs must also declare:

- funds and sub-funds that are not subject to a performance fee;
- funds that have been approved by the CSSF but have not yet been launched; and
- funds that became inactive following the full redemption of their shares or units (and await reactivation)

The performance fee questionnaire as well as subsequent update notifications (such as the first imposition of a performance fee, change in the characteristics of the performance fee, etc.) must be completed and submitted by an eDesk user linked to the IFM.

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## New Luxembourg RCS submission rules applicable as of 31 March 2022

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A [public notice](#) published by the Luxembourg Business Register (“**LBR**”) on 1 October 2021 announced that the forms used in the RCS registration procedures, which are currently in PDF format, will be replaced by HTML forms to be completed directly online.

When using the new HTML forms, persons and entities registered with the RCS must include the Luxembourg national identification number (from the National Register of Natural Persons) of any natural person registered with the RCS. Natural persons will be given a number on registration with the RCS. This number will not be made public and will be sent to the private address of the registered person. The number must be used on making any filing regardless of the capacity in which the natural person registered with the RCS (as shareholder, director, auditor, etc.).

Natural persons registering with the RCS who do not yet have a Luxembourg national identification number must therefore submit, in addition to the documents making up their application to the RCS, additional documents and information (e.g. nationality, gender, private residence).

Following a transitional period, if a person already registered with the RCS wants to continue with a new registration but hasn’t already provided their identification number on a voluntary basis, they will have to do so before being able to proceed.

Following the introduction of the new forms, the RCS will check the Luxembourg addresses of natural persons making filings against to the information contained in the National Register of Localities and Streets.

The RCS has published a detailed [brochure relating to the new filing formalities](#) applicable from 31 March 2022.

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## CSSF updates UCITS FAQ to clarify holding of ancillary liquid assets held by UCITS and diversification rules

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On 3 November 2021, the CSSF published a [press release](#) on the latest update of its [frequently asked questions concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment \(version 13\)](#) providing clarification on ancillary liquid assets held by UCITS and UCITS investment policy diversification rules (the **"UCITS FAQ"**).

In relation to ancillary liquid assets, new question 14 of the UCITS FAQ provides that such assets should be limited to deposits at sight which must be accessible by the bank at any time in order to cover any exceptional payments or to reinvest in eligible assets provided under article 41(1) of the 2010 Law. Holding of such ancillary liquid assets must be limited to twenty per cent (20%) of the UCITS' net assets. Such limit can be temporarily exceeded in case of unfavourable market conditions or if best interest of investors so requires. New question 15 of the UCITS FAQ clarifies that bank deposits, money market instruments or money market funds qualify as eligible assets for UCITS and cannot be included in ancillary liquid assets under article 41(2)(b) of the 2010 Law. New question 16 clarifies that a UCITS is not authorised to invest in such assets (or other eligible assets) if it is not permitted to do so by its investment policy, which should describe categories of eligible assets in order to achieve its goals, for treasury purposes, and in the event of unfavourable market conditions. Should a UCITS invest in other categories of assets, provisions of [CSSF Circular 02/77](#) apply.

The UCITS FAQ provides guidance in relation to asset diversification rules. The CSSF clarified that the twenty per cent (20%) deposit limit made with the same body applies to ancillary liquid assets. However, such limit does not apply to margin accounts, which should be taken into account only for the global limit applicable to an issuer.



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## CSSF communication to UCIs and IFMs on cessation of EONIA and LIBOR

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On 19 November 2021, the CSSF issued a [press release](#) addressed to undertakings for collective investments (the “**UCI**”) and investment fund managers (the “**IFMs**”) which are subject to the supervision of the CSSF and use benchmarks. In light of cessation of EONIA and LIBOR benchmarks, the CSSF expects those entities to have taken steps to ensure a smooth transition to alternative rates and have in place robust fallback provision in case of cessation of any other benchmark used. Moreover, UCI and IFMs should be prepared to share with the CSSF upon request information on arrangements implemented and to prove that such arrangements are reflected in the contractual relationship with investors.

### EONIA

EONIA was discontinued on 3 January 2022 and as of that day UCIs and IFMs supervised by the CSSF are not allowed to apply it. The CSSF reminded the market that by the way of Implementing Regulation (EU) 2021/1848, the European Commission designated €STR as the replacement rate for EONIA (with Spread Adjustment Value of 0.085%). A risk-free rate €STR has been also recommended by the European Money Markets Institute and the Euro Risk Free Rate Working Group as a suitable replacement for EONIA.

### LIBOR

In relation to LIBOR, the CSSF pointed out that in accordance with the announcements made the Financial Conduct Authority (FCA), it ceases to be applied or be representative:

- for GBP, EUR, CHF and JPY settings, and the 1-week and 2-month USD settings - immediately after 31 December 2021; and
- for remaining USD setting - immediately after 30 June 2023

Nonetheless, in September 2021 the FCA confirmed that in order to avoid disruption to legacy contracts, LIBOR administrator is required to publish the 1, 3- and 6-month GBP and JPY LIBOR settings under a “synthetic” methodology, based on term risk-free rates for the duration of the entire 2022. Therefore, such LIBOR settings will be available for use in legacy contracts, but not for any new business.

The CSSF specifically pointed out that UCI and IFMs subject to its supervision are obliged to follow the abovementioned timelines. It also reminded the markets that while the Working Group on Sterling Risk Free Rates recommended SONIA as the preferred alternative rate for LIBOR rates quoted in GBP, the Alternative Reference Rates Committee promoted the SOFR as its preferred alternative to LIBOR. The European Commission, by the way of Implementing Regulation (EU) 2021/1847 designated the respective setting of the compounded SARON as the replacement rates for CHF LIBOR.

Given that replacement benchmarks in relation to GBP, JPY or US dollar LIBOR settings have not been adopted by the European Commission, the CSSF encouraged IFMs and UCI to actively reduce their exposure to such LIBOR settings.



## CSSF publishes registration form for meetings with the UCI departments

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On 19 November 2021 the CSSF issued a short [communiqué](#) about new rules applicable to meetings with its UCI departments. Such meetings can be scheduled between 10 a.m. and 12 p.m. and between 2 p.m. and 4 p.m. on Tuesdays and Thursdays by sending a [form](#) to [meetings.opc@cssf.lu](mailto:meetings.opc@cssf.lu).

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## CSSF guidance on virtual assets

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On 29 November 2021, the CSSF published its [guidance](#) on virtual assets, noting the increasingly important role that virtual assets are playing in today's financial sector, and emphasising that virtual assets come with a variety of rights. The CSSF further reminded the entities under its supervision to carry out a thorough due diligence before conducting any activity in relation to virtual assets and to closely follow any regulatory development in relation to the prudential treatment of virtual assets.

As part of this guidance, the CSSF published two documents with frequently asked questions (the "**FAQ(s)**"). One of the FAQs focused on credit institutions, while the other FAQ focused on undertakings for collective investment. The main features of the latter are highlighted below:

### [FAQ Virtual Assets – Undertakings for collective investment](#)

The FAQ in relation to undertakings for collective investment was published on 29 November 2021 and last updated on 4 January 2022. The CSSF clarified that undertakings for collective investment targeting non-professional customers and pension funds are not allowed to invest (directly or indirectly) in virtual assets, with the exemption of virtual assets qualifying as financial instruments.

Following the same reasoning, the CSSF further stated that alternative investment funds may invest (both directly and indirectly) in virtual assets, provided that their units are only marketed to professional investors. The CSSF specified that if such an alternative investment fund is managed by a Luxembourg authorised alternative investment fund manager, the latter must obtain prior authorisation from the CSSF for the strategy "Other-Other Fund-Virtual assets". The FAQ also provides a list of documentation the CSSF requires for such authorisation.

Each investment fund manager should assess their services in light of the activities listed under article 1 (20c) of the [law of 12 November 2004 on the fight against money laundering](#), as amended (the "**2004 law**"), as any such activities may not be performed unless an application for registration as virtual asset service provider is submitted to the CSSF.

Further, the CSSF stressed the increased risks posed by investments in virtual assets, and stated that those responsible for compliance with the professional obligations as regards the fight against money laundering and terrorist financing (RR), and the compliance officer at appropriate hierarchical level (RC) are expected to have demonstrable and adequate understanding of the specific risks involved and of measures to mitigate them.

On 4 January 2022, the CSSF added another topic to the FAQ, providing some guidance in relation to Luxembourg depositaries. Luxembourg fund depositaries may be appointed as depositaries for investment funds investing directly in virtual assets, taking into account the risks related to safekeeping of such assets.

The CSSF specified that if a depositary does not offer safekeeping services and the investment fund or its manager appoints a specialised virtual asset service provider ("**VASP**") for custodian wallet services, the VASP bears the liability for the restitution of assets. At the same time, should a depositary wish to provide services such as safekeeping of virtual assets, it will need to register as a VASP, and will need to inform the CSSF in a timely manner.

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## CSSF risk reporting dashboard for 2020 published

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On 1 December 2020 the CSSF published [UCITS risk reporting dashboard](#) (the **"Dashboard"**) including data gathered for year 2020. It summarizes all information Luxembourg-domiciled UCITS are required to submit to the CSSF through risk reporting. It includes general information and basic functional data including the global exposure calculation method, realised level of leverage for UCITS using VaR approach, the expected level of leverage. The Dashboard also describes the main trends and changes between the 2019 and 2020 reporting periods with the latter being heavily impacted by the outbreak of the covid-19 pandemic. The areas identified include market risk, leverage as well as liquidity and credit risks.

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## CSSF fast track procedure for filing of the Taxonomy Regulation disclosures

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On 2 December 2021, the CSSF published a [communiqué](#) on regulatory requirements and the fast track procedure in relation to Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investments (the **"Taxonomy Regulation"**). Please refer to our [briefing](#) for more information on the requirements and procedure put in place by the CSSF.

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## FAQ concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment – version 14

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On 17 December 2021, the CSSF updated its [FAQ on the UCI Law](#) (question 18) with information on the possibility of UCITS investing in Special Purpose Acquisition Companies (SPACs).

In principle, UCITS are not prohibited from investing in SPACs. SPACs may constitute eligible investments for UCITS, provided they qualify, at any point of their life cycle, as transferable securities within the meaning of the UCI Law, the Grand-ducal regulation of 8 February 2008, as further clarified by the CESR guidelines concerning eligible assets for investment by UCITS.

However, as SPACs may include different kinds of risks, before investing into SPACs, UCITS must perform a detailed pre-trade risk assessment covering all material risks to which the UCITS will be exposed to as a result of the investment.

The CSSF is of the opinion that a UCITS' investment in SPACs should in principle be limited to a maximum of 10% of a UCITS' net asset value, provided that such SPAC investments fulfil all applicable eligibility requirements, are appropriately disclosed in UCITS prospectuses and are captured adequately by the risk management process of the UCITS.



## CSSF communiqué on domiciliation activity exercised when operating a business centre or a co-working space

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On 23 November 2021, the CSSF published a [communiqué](#), where it observed some recent developments in services provided by co-working spaces and business centres in Luxembourg, explaining that these centres now often allow their clients to establish their head office at their address and offer several additional services.

The CSSF reminded that providing a head office or commercial address to a company for the company's operation in accordance with its corporate object and providing any service in relation to such operation is considered as company domiciliation activity in accordance with the [law of 31 May 1999 governing the domiciliation of companies](#), as amended.

The CSSF further clarified that the rental of a closed and private office to a company for use as its head office is not considered as a domiciliation activity, provided that the rental is considered genuine.

Finally, the CSSF reminded that any domiciliation activity exercised outside the main activity of a service provider is subject to the prior authorisation of the CSSF as specialised professionals of the financial sector.

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## CSSF Circular 21/788 providing guidelines for the collective investment sector on the CSSF AML/CFT external report

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On 17 December 2021, the CSSF published [Circular 21/788](#), providing guidance to all Luxembourg investment fund managers and investment funds regulated by the CSSF on the AML/CFT external report mentioned in article 49 of [CSSF Regulation 12-02](#) of 14 December 2012 on the fight against money laundering and terrorist financing (the "**Report**").

First, the CSSF clarified that registered AIFMs should make AML/CFT external reports. Investment funds that have appointed an investment fund manager do not need to make AML/CFT external reports.

Second, the CSSF highlighted that professionals required to appoint an approved statutory auditor must mandate the same auditor to provide the Report. Professionals who are not required to appoint an approved statutory auditor to audit of their annual accounts, must appoint an auditor solely for providing the Report.

Third, the CSSF explained the Report is divided into two main sections: a section in the context of the CSSF annual AML/CFT online survey; and a section on sample testing of work to be performed by the external AML/CFT expert.

Finally, the CSSF noted that the Report must be submitted by the person responsible for compliance with the professional obligations as regards the fight against money laundering and terrorist financing (RR) or by the compliance officer at appropriate hierarchical level (RC).



## CSSF Circulars 21/789 and 21/790

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On 22 December 2021, the CSSF has published [Circular 21/789](#) and [Circular 21/790](#) regarding (i) practical rules concerning the self-assessment questionnaire to be submitted annually by Luxembourg undertakings for collective investment and (ii) the engagement of Luxembourg undertakings for collective investments' approved statutory auditors and practical rules concerning the management letter and the separate report to be drawn up annually.

Circular CSSF 21/789 is applicable to all authorised IFMs, Self-managed Investment Firms ("**SIAGs**") and Self-managed Alternative Investment Funds ("**FIAAGs**"), while the CSSF Circular 21/790 applies to regulated UCIs, including UCITS, UCIs subject to part II of the Law of 17 December 2010, Specialised Investment Funds ("**SIFs**") and Investment Companies in Risk Capital ("**SICARs**").

Both Circulars introduce new regulatory requirements and a regulatory framework regarding the following reports:

- **Self-assessment questionnaire:** The concerned entities are required to complete an annual self-assessment questionnaire ("**SAQ**") and to inform the CSSF if their approved statutory auditor (*réviseur d'entreprises agréé*) issues a modified audit opinion
- **Separate report:** The approved statutory auditor is required to review certain SAQ questions and to complete a separate report
- **Management letter:** The circulars also set out a regulatory framework applicable to the annual management letter to be prepared by the approved statutory auditor

The requirements and regulatory framework set out under Circular 21/789 will apply for reporting years ending 31 December 2021 and afterwards.

The requirements of Circular 21/790 will apply for financial years ending 30 June 2022 and afterwards, with a phased implementation for the separate report as specified in the circular.

All reports must be submitted via the CSSF eDesk platform.

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## Grand-ducal Regulation of 17 December 2021 relating to the fees to be levied by the CSSF

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The [Grand-Ducal Regulation of 17 December 2021 relating to the fees to be levied by the CSSF](#) came into force on 1 January 2022.

The Regulation sets out increased and new fees to be paid by the entities supervised by the CSSF, including Luxembourg regulated investment funds and IFMs, credit institutions and other financial sector professionals.

The most important changes affecting investment funds include:

- increased examination and annual fees for UCITS, Part II UCIs, SIFs and SICARs, foreign investment funds (including UCITS and AIFs) marketed in Luxembourg
- new examination and annual fees for Luxembourg IFMs whose activities include certain additional activities and/or investment strategies (*e.g.* any additional strategy exceeding the initial core alternative investment fund investment strategy, performing central administration/registrar agent services, one or several top-up MIFID services, etc.)

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## CSSF update of frequently asked questions regarding the AML/CFT Market Entry Form (Funds and IFMs)

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On 11 December 2021, the CSSF updated its [frequently asked questions](#) regarding the AML/CFT Market Entry Form (the **"FAQ"**), redrafting question 11 and slightly amending question 1.

Question 11 is redrafted to clarify that in case of an umbrella structure, a single Market Entry Form should be completed per fund, and not per sub-fund individually. The CSSF further clarified that any change to the person responsible for compliance with professional obligations as regards the fight against money laundering and terrorist financing (RR) or by the compliance officer at appropriate hierarchical level (RC) or any modifications in the fund not covered by the FAQ, do not require an update or a new submission of the Market Entry Form. These changes should be included in the Market Entry Form at the next trigger event instead.

Question 1 was amended only to direct the reader to question 11 for more details in the circumstances of the approval of (a) new sub-fund(s) to an existing fund.





## How Eversheds Sutherland can help

Please do not hesitate to get in touch to discuss the details of the CSSF publications and see how they impact your business. Members of our team will be happy to assist and provide you with advice tailored to your needs.

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