

Non-official translation of the French original

Luxembourg, 3rd August, 2007

To all specialised investment funds.

CSSF CIRCULAR 07/309

Concerns: Risk diversification in relation to specialised investment funds (“SIF”)

Ladies and Gentlemen,

Article 1 of the law of 13th February 2007 relating to SIF provides that for the application of the law, shall be considered as specialised investment funds any undertakings for collective investment situated in Luxembourg:

- the exclusive object of which is the collective investment of their funds in assets in order to spread the investment risks and to ensure for the investors the benefit of the results of the management of their assets, and
- the securities of which are reserved to one or several well-informed investors, and
- the constitutional documents or offering documents of which provide that they are subject to the provisions of this law.

The law of 13th February 2007 thus provides that the collective investment of the funds has to be effected in assets “in order to spread the investment risks”. Neither the law, nor the comments to the articles contain any additional provisions in order to define or to interpret the concept of risk diversification.

In comparison to the law of 1991 in relation to UCI the securities of which are not intended to be placed with the public, the law of 13th February 2007 enlarges the concept of eligible investors in order to cover, in addition to institutional investors, professional investors and other “well-informed investors”, in accordance with the criteria determined more precisely in Article 2 of such law. This means that SIF are open to a private clientele of “sophisticated” individuals. For that reason, the legislator has been able to provide a lighter regulatory regime for SIF. In this same context, the CSSF considers that the concept of risk diversification can be interpreted in a flexible manner.

Since all investors in specialised investment funds are institutional investors, professional investors or other well-informed investors, they are supposed to be sufficiently experienced to make their own judgement of the concept of risk diversification and of the information necessary for them to make their judgement. These investors do not need the same degree of protection as investors in UCI subject to the law of 20th December 2002.

Pursuant to Article 53 of the law of 13th February 2007, the offering document includes the information that is necessary in order to allow investors to make an informed judgement of the investment proposed to them. The CSSF considers that the offering document must include quantifiable limits documenting that the principle of risk diversification is complied with.

As a general rule, the CSSF considers that the principle of risk diversification is complied with if the investment restrictions of a SIF comply with the following guidelines:

1. A SIF may in principle not invest more than 30% of its assets or of its commitments to subscribe in securities of the same kind issued by the same issuer.

This restriction does not apply :

- to investments in securities issued or guaranteed by a Member State of the OECD, or by its local authorities or by supranational institutions and bodies of a European, regional or worldwide nature;
- to investments in target UCI which are submitted to risk diversification requirements at least similar to those provided for in relation to SIF.

For the application of the present restriction, each sub-fund of a target UCI with an umbrella structure has to be considered as a separate issuer, provided that the principle of the segregation of commitments of the different sub-funds in relation to third parties is ensured.

2. Uncovered sales may in principle not have as a result that the SIF holds an uncovered position in securities of the same kind issued by the same issuer which represent more than 30% of its assets.

3. When using financial derivative instruments, the SIF must ensure a comparable risk diversification by means of an appropriate diversification of the underlying assets. For the same purpose, the counterparty risk in an OTC operation must, as the case may be, be limited according to the quality and the qualification of the counterparty.

These guidelines shall in principle apply to all SIF. It is understood that the CSSF may grant derogations based on an adequate justification. Furthermore, in relation to a specific investment policy, the CSSF may request that the SIF comply with certain additional investment restrictions.

In order to enable the CSSF to verify whether the aforementioned guidelines are complied with, the promoter of the SIF has to provide the CSSF with all necessary information and documents.