

**COMMISSION DE SURVEILLANCE
du SECTEUR FINANCIER**

Luxembourg, 19 February 2008

To all Luxembourg undertakings for collective
investment and to all those that take part in the
functioning and control of these undertakings

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| CIRCULAR CSSF 08/339 |
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(Non official translation of the French original)

**Re: Guidelines of the Committee of European Securities
Regulators (CESR) concerning eligible assets for
investment by UCITS**

Ladies and Gentlemen,

This circular draws the attention of UCITS subject to Part I of the amended law of 20 December 2002 relating to undertakings for collective investment to the publication of the following guidelines published by the Committee of European Securities Regulators (hereafter "CESR"):

- 1) *CESR's guidelines concerning eligible assets for investment by UCITS – March 2007, Ref.: CESR/07-044*
- 2) *CESR's guidelines concerning eligible assets for investment by UCITS – The classification of hedge fund indices as financial indices – July 2007, ref.: CESR/07-0434.*

These documents are attached to this circular. They are also available on the CESR website: <http://www.cesr.eu>.

CESR's guidelines should be read in conjunction with the provisions of Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended, as regards the clarification of certain definitions.

Directive 2007/16/EC aims at clarifying certain definitions of Directive 85/611/EEC, as amended, concerning eligible assets for investment by UCITS in order to ensure uniform application of this Directive throughout the European Union.

Directive 2007/16/EC has been transposed into Luxembourg law through the Grand-Ducal regulation of 8 February 2008 concerning certain definitions of the amended law of 20 December 2002 relating to undertakings for collective investment. This regulation has been published in *Mémorial A* – N° 19 of 19 February 2008.

In relation to the provisions of Directive 2007/16/EC and Grand-Ducal regulation of 8 February 2008, the guidelines issued by CESR in the document "*CESR's guidelines concerning eligible assets for investment in UCITS*" provide additional clarifications relating to eligible assets for investment by UCITS covered by Directive 85/611/EEC, as amended.

For example, point 23 of "*CESR's guidelines concerning eligible assets for investment by UCITS*" provides further details in relation to Article 10 of Directive 2007/16/EC as regards transferable securities and money market instruments embedding derivatives. It is important to note in this context that UCITS are responsible for assessing, where applicable, whether these transferable securities and money market instruments embed or do not embed a derivative.

Special attention should be paid to point 26 of *CESR's guidelines concerning eligible assets for investment by UCITS*" which provides further details on the first two indents of Article 41(1)e) of the amended law of 20 December 2002 relating to undertakings for collective investment.

More specifically, the above document defines in particular the factors that can be used to assess whether the supervision to which a collective investment undertaking must be subject is equivalent in order to qualify as an eligible undertaking for collective investment in the context of the investment policy of a UCITS.

The guidelines issued by CESR in the document "*CESR's guidelines concerning eligible assets for investment by UCITS – The classification of hedge fund indices as financial indices*" provide further specific details on the eligibility of hedge fund indices as underlying instruments of a financial derivative instrument. Moreover, this document specifies that UCITS seeking exposure to a hedge fund index must undertake out appropriate due diligence. This includes the obligation for the UCITS to assess the quality of the hedge fund index.

All supervisory authorities members of CESR have committed to apply these CESR guidelines.

UCITS shall thus take into account these guidelines when assessing whether a specific financial instrument constitutes an eligible asset for investment within the meaning of the relevant provisions of the amended law of 20 December 2002, as further specified in Grand-Ducal regulation of 8 February 2008.

The guidelines issued by CESR are applicable as from the entry into force of Grand-Ducal regulation of 8 February 2008.

UCITS existing at the time of the implementation of the guidelines issued by CESR benefit from an extension until 23 July 2008 at the latest to comply with these guidelines.

Annexes:

Annexe I: *CESR's guidelines concerning eligible assets for investment by UCITS – March 2007, Ref.: cCESR/07-044*

Annexe II: *CESR's guidelines concerning eligible assets for investment by UCITS – The classification of hedge fund indices as financial indices – July 2007, Ref.: CESR/07-434*