

Luxembourg, 25<sup>th</sup> May 2005

To all Luxembourg undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings

**CSSF CIRCULAR 05/186**

**Concerns: Guidelines of the Committee of European Securities Regulators (CESR) regarding the application of transitional measures resulting from directives 2001/107/CE and 2001/108/CE (UCITS III) amending directive 85/611/CEE (UCITS I)**

Ladies and Gentlemen,

The purpose of this circular is to draw the attention of undertakings for collective investment in transferable securities subject to part I of the amended law of 20<sup>th</sup> December 2002 (hereafter "UCITS") to the publication of the guidelines of the Committee of European Securities Regulators (CESR) concerning the application of the transitional provisions of the directives 2001/107/CE and 2001/108/CE (UCITS III) amending directive 85/611/CEE (UCITS I).

This document, which has been published by CESR on 3<sup>rd</sup> February 2005 with reference 04/-434b, can be consulted on the internet site of CESR at the address <http://www.cesr-eu.org>.

In this context, it can be recalled that directives 2001/107/CE and 2001/108/CE, which had to be implemented in the legislations of the Member Countries of the European Union by 13<sup>th</sup> February 2004 at the latest, comprise transitional provisions, also called "grandfathering provisions". Under the terms of directives 2001/107/CE and 2001/108/CE, UCITS and management companies subject to the amended directive 85/611/CEE must comply with the requirements of the directive by 13<sup>th</sup> February 2007 at the latest.

Directives 2001/107/CE and 2001/108/CE have been implemented into Luxembourg law by the law of 20<sup>th</sup> December 2002 relating to undertakings for collective investment (UCI).

The guidelines of the CESR aim at putting an end to the divergent interpretations of the transitional provisions by the supervisory authorities of the Member States of the European Union. They relate to the transitional provisions concerning UCITS and management companies, to the provisions concerning the simplified prospectus and to the scope of the European passport for management companies and for UCITS.

The guidelines of the CESR fix a series of new deadlines for certain UCITS and for certain management companies.

These new deadlines imply that, in order to comply with the guidelines of the CESR, certain UCITS and certain management companies have to apply the rules resulting from directives 2001/107/CE and 2001/108/CE before the date of 13<sup>th</sup> February 2007.

The following extracts, which are of particular interest, can be highlighted:

- \* ) A *grandfathered* management company is allowed to launch UCITS of the UCITS III type until 30<sup>th</sup> April 2006 if it employs an appropriate risk-management process. After this date the management company must meet the requirements of the UCITS III directive. Management companies which have launched UCITS of the UCITS III type before 30<sup>th</sup> April 2006 must have received by 30<sup>th</sup> April 2006 at the latest from the competent authority the authorisation as management company complying with the requirements of the UCITS III directive. This should be stated by a special confirmation from the competent supervisory authority.
- \* ) A *grandfathered* UCITS I umbrella fund is allowed to launch new UCITS I sub-funds until 31<sup>st</sup> December 2005. *Grandfathered* UCITS I umbrella funds which have launched a sub-fund since 13<sup>th</sup> February 2002 must meet the requirements of the UCITS III directive by 31<sup>st</sup> December 2005 at the latest.
- \* ) All UCITS (comprising UCITS of the UCITS I type) must have a simplified prospectus as from 30<sup>th</sup> September 2005 at the latest.

Concerning the requirement to have a simplified prospectus, it can be noted that it appears from the provisions of the amended law of 20<sup>th</sup> December 2002 concerning UCIs and the provisions of CSSF circular 03/122 concerning clarifications on the simplified prospectus that UCITS of the UCITS III type must publish a simplified prospectus when they are subject to part I of such law.

It can be noted that UCITS of the UCITS I type which have been created before 13<sup>th</sup> February 2002 and which have not launched new compartments since 13<sup>th</sup> February 2002 and management companies created before 13<sup>th</sup> February 2004 which only manage UCITS of the UCITS I type which have not launched new compartments since 13<sup>th</sup> February 2002 have time until 13<sup>th</sup> February 2007 to comply with the directives 2001/107/CE and 2001/108/CE.

All supervisory authorities which are members of CESR have undertaken to apply the guidelines of the CESR.

It should be highlighted that it is highly recommended that the UCITS concerned comply with the deadlines fixed by the guidelines of the CESR concerning the transitional provisions resulting from directives 2001/107/CE and 2001/108/CE.

Indeed, the non-compliance with the deadlines fixed by the guidelines of the CESR concerning the transitional provisions resulting from directives 2001/107/CE and 2001/108/CE may jeopardise the marketing in other Member Countries of the European Union of the UCITS and management companies concerned under the European passport.

We request that you take into account the deadlines fixed by the guidelines of the CESR and to take these in consideration for the purpose of the procedures of conversion of UCITS and management companies under the regime of part I and chapter 13, respectively, of the amended law of 20<sup>th</sup> December 2002 concerning UCITS.

We recommend that you consult the guidelines of the CESR concerning the transitional provisions of directives 2001/107/CE and 2001/108/CE.

Yours sincerely,

COMMISSION OF THE SUPERVISION OF THE FINANCIAL SECTOR

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