

**COMMISSION FOR THE SUPERVISION  
OF THE FINANCIAL SECTOR**

*Unofficial translation of the French original*

**CSSF Regulation No. 15-08 adopting the implementing measures of Article 7bis of the Law of 15 June 2004 on SICARs as regards the requirements in respect of the management of conflicts of interest for SICARs which are not covered by the specific provisions of Part II of this law**

The Executive Board of the Commission for the Supervision of the Financial Sector,

Having regard to Article 108bis of the Constitution;

Having regard to the Law of 23 December 1998 establishing the Commission for the Supervision of the Financial Sector and especially its Article 9, paragraph (2);

Having regard to the Law of 15 June 2004 on the investment company in risk capital (SICAR);

Adopts:

CHAPTER I

**SUBJECT MATTER, SCOPE AND DEFINITIONS**

*Article 1*

**Subject matter**

This Regulation adopts the implementing measures of the first paragraph of Article 7bis of the Law of 15 June 2004 on SICARs regarding the structures and organisational requirements intended to minimise the risks of conflicts of interest.

*Article 2*

**Scope**

This Regulation applies to SICARs within the meaning of Article 1 of the Law of 15 June 2004 on SICARs which are not covered by the specific provisions which apply under Part II of this law to SICARs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

*Article 3***Definitions**

For the purposes of this Regulation, the following definitions shall apply in addition to those set out in the Law of 15 June 2004 on SICARs:

- 1) "directors"\* means the persons referred to in Article 12 (3) of the Law of 15 June 2004 on SICARs;
- 2) "relevant person" means any person contributing towards the business activities of the SICAR or any person directly or indirectly linked to the SICAR.

## CHAPTER II

**CONFLICTS OF INTEREST***Article 4***Criteria for the identification of conflicts of interest**

1. For the purposes of identifying the types of conflicts of interest that may arise in the course of providing services and activities, and whose existence may damage the interests of SICARs, SICARs shall take into account, by way of minimum criteria, the question of whether a relevant natural or legal person is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

- a) that person is likely to make a financial gain, or avoid a financial loss which gives rise to a conflict of interest at the expense of the SICAR;
- b) that person has an interest in the outcome of a service or an activity provided to the SICAR or another client or of an activity performed for their benefit or of a transaction carried out on behalf of the SICAR or another client, which is distinct from the SICAR's interest in that outcome;
- c) that person has a financial or other incentive to favour the interests of another client or group of clients over the interests of the SICAR;
- d) that person carries on the same activities for the SICAR and for another client or clients which are not SICARs;

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\* The original French regulation uses the term "dirigeants" which includes directors, managers and officers.

e) that person receives or will receive from a person other than the SICAR an inducement in relation to collective portfolio management activities provided to the SICAR, in the form of monies, goods or services other than the standard commission or fee for that service.

2. SICARs shall take into account, when identifying the types of conflicts of interest, the interests of the SICAR, including those deriving from their belonging to a group or from the performance of services or activities, the interests of the clients and the duty of the SICAR towards its investors.

### *Article 5*

#### **Conflicts of interest policy**

1. SICARs shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the SICAR and the nature, scale and complexity of its business.

SICARs shall also establish, implement and maintain a policy in order to prevent each relevant person from entering into personal transactions which may give rise to a conflict of interest.

SICARs shall develop an adequate policy to prevent or manage each conflict of interest resulting from the exercise of voting rights attaching to the instruments held.

Where the SICAR is a member of a group, the policy shall also take into account any circumstances which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph (1) shall include the following:

a) the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the SICAR, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the SICAR;

b) procedures to be followed and measures to be adopted in order to manage such conflicts.

3. SICARs must, as part of their authorisation file, confirm to the CSSF the implementation of a conflicts of interest policy.

*Article 6***Independence in conflicts management**

1. The procedures and measures provided for in Article 5, paragraph (2) point b) of this Regulation shall be designed to ensure that the relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the SICAR and of the group to which it belongs and to the materiality of the risk of damage to the interests of the SICAR.

2. The procedures to be followed and measures to be adopted in accordance with Article 5, paragraph (2) point b) of this Regulation shall include the following where necessary and appropriate for the SICAR to ensure the requisite degree of independence:

a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of the SICAR;

b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict with the interests of the SICAR;

c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, SICARs shall adopt such alternative or additional measures and procedures as will be necessary and appropriate for those purposes.

*Article 7***Management of activities giving rise to detrimental conflicts of interest**

1. SICARs shall keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the SICAR in which a conflict of interest entailing a material risk of damage to the interests of the SICAR has arisen or, in the case of an ongoing collective portfolio management activity, may arise.
2. Where the organisational or administrative arrangements made by the SICAR for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the SICAR or of its investors will be prevented, the directors shall be promptly informed in order for them to take any necessary decision to ensure that in any case the SICAR acts in the best interests of the SICAR and of its investors.
3. SICARs shall report situations referred to in paragraph (2) to investors by any appropriate durable medium and give reasons for their decision.

*Article 8***Publication**

This Regulation will be published in the *Mémorial* as well as on the website of the CSSF.

This Regulation enters into force on the first day of the month following its publication in the *Mémorial*.

SICARs already in existence at the moment of the entry into force of this Regulation have until 31 March 2016 at the latest to comply with the provisions of this Regulation.

Luxembourg, 31 December 2015

**COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR**

Claude SIMON  
Directeur

Andrée BILLON  
Directeur

Simone DELCOURT  
Directeur

Jean GUILL  
Directeur général