

# ELVINGER, HOSS & PRUSSEN

## LUXEMBOURG LAW FIRM

COMMISSION FOR THE SUPERVISION  
OF THE FINANCIAL SECTOR

*Unofficial translation of the French original version*

Luxembourg, 22 July 2014

To all Luxembourg undertakings for  
collective investment subject to the Law of 17  
December 2010

<b>CSSF CIRCULAR 14/591</b>
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**Re: Protection of investors in case of a significant change to an open-ended undertaking for collective investment**

Ladies and Gentlemen,

According to an existing well-established supervisory practice, the CSSF requires for each significant change affecting investors' interests in an open-ended undertaking for collective investment ("UCI") governed by the Luxembourg Law of 17 December 2010 relating to UCIs (the "Law of 2010") that sufficient time is provided to these investors in order for them to make an informed decision on the envisaged change and that, in the event of disagreement, they are given the possibility to request redemption or conversion of their shares/units free of redemption or conversion charges. The purpose of this Circular is to expressly lay down this administrative practice and to provide written clarifications.

### **1. Background**

According to Article 151 (1) of the Law of 2010, the prospectus shall include the information necessary for investors to be able to make an informed judgement on the investment proposed to them. In this context, the CSSF assesses whether an envisaged change to the prospectus requires additional measures to protect the interests of the investors in the UCI. It is understood that this will not be the case for every change, but given that, *inter alia*, investors in UCIs are essentially retail investors, the CSSF is of the view that they have to be given sufficient time to make an informed decision about a change which is significant enough to potentially affect the investors' interests and have an impact on the basis on which they made their existing investment.

## **2. Process**

When considering a significant change to their structure, organisation or operations, UCIs should question whether there is a high probability that an investor, informed of such a change, would reconsider its investment in the UCI. A UCI should therefore analyse the potential impact of any envisaged change on its investors (i.e. compare the investors' interests/situation before and after implementation of the change) and submit the proposed change, together with appropriate explanations for the change, to the CSSF. This should be done well in advance of the relevant change becoming effective.

The CSSF reserves the right, on a case-by-case basis, to determine, based on the information provided, whether any envisaged change at the level of a UCI should be considered significant and, as the case may be, to request a notification to investors. A significant change may, in principle, only be implemented after the expiry of the notification period.

In conformity with the CSSF's current administrative practice, the minimum period for notifying investors of a significant change to the UCI they are invested in should be **one (1) month**.

During this one-month period before the entry into force of the significant change, investors have the right to request the repurchase or redemption of their units without any repurchase or redemption charge. In addition to the possibility to redeem units free of charge, the UCI may also (but is not obliged to) offer the option to investors to convert their units into units of another UCI (or, in case the change affects only one sub-fund, into units of another sub-fund of the same UCI) without any conversion charges.

The CSSF may nevertheless agree, by way of a duly justified prior request for derogation, not to impose such a notification period with the possibility for investors to redeem or convert their units free of charge (for example where all the investors of the relevant UCI agree with the envisaged change). Similarly, the CSSF may agree only to impose a notification period for duly informing the investors of the relevant change before it becomes effective, but without the possibility for investors to redeem or convert their units free of charge.

For the sake of completeness, the notification period referred to in this Circular is without prejudice to the prior notice period(s) required by law for investors to approve such events. The content of the Circular is also without prejudice to the specific requirements of other competent authorities in jurisdictions (inside and outside of the European Union) where the UCI is registered for distribution.

## **3. Entry into force**

This Circular is immediately applicable as from the date of its publication.

COMMISSION for the SUPERVISION of the FINANCIAL SECTOR

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