

ELVINGER, HOSS & PRUSSEN

LUXEMBOURG LAW FIRM

COMMISSION for the SUPERVISION of the FINANCIAL SECTOR

Unofficial translation of the French original version

Luxembourg, 30 September 2014

To all Luxembourg undertakings for collective investment in transferable securities and to those involved in the operation and monitoring of these undertakings.

CSSF CIRCULAR 14/592

Re: Guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues

Ladies and Gentlemen,

We refer to CSSF Circular 13/559 on the guidelines of the European Securities and Markets Authority (hereafter "ESMA") on ETFs and other UCITS issues.

The purpose of this Circular is to implement the amended version of the "Guidelines for competent authorities and UCITS management companies – Guidelines on ETFs and other UCITS issues (Ref. ESMA/2014/937EN)" (hereafter the "Guidelines") published on 1 August 2014 by ESMA into the Luxembourg regulatory framework applicable to UCITS subject to Part I of the Law of 17 December 2010 relating to undertakings for collective investment (hereafter the "Law").

The Guidelines are annexed to this Circular. The English version as well as the French and German translations are available on ESMA's website at the address <http://www.esma.europa.eu/>.

The amendments to the Guidelines concern paragraphs 43(e) and 48 relating to the diversification of collateral received by UCITS for the purpose of reducing exposure to counterparty risk in OTC financial derivative transactions and efficient portfolio management techniques.

More specifically, by derogation from the rule that a basket of collateral with an exposure to a given issuer cannot exceed 20% of the net asset value, the new Guidelines allow UCITS to be fully collateralised in different transferable securities and money market instruments issued or guaranteed by a Member State, its local authorities, a third country or a public international body to which one or more Member States belong, on condition that they receive transferable securities from at least six different issues where the transferable securities from a single issue should not account for more than 30% of the UCITS' net asset value.

The introduction of this derogation is accompanied by the obligation to ensure adequate transparency in the prospectus and in the annual report, in accordance with the provisions of points 43(e) and 48 of the Guidelines, respectively.

In this context, the CSSF wishes to specify that the transferable securities and money market instruments covered by this derogation must, as for all collateral received, be (amongst other) of high credit quality, and highly liquid in order to reduce UCITS' counterparty risk exposure in OTC financial derivative transactions and efficient portfolio management techniques.

Moreover, in general, the CSSF wishes to reiterate that, in application of point 43(f) of the Guidelines, the risks linked to the management of collateral must be identified, managed and mitigated by the risk management process that management companies within the meaning of chapter 15 of the Law (hereafter "management companies") and investment companies which have not designated a management company within the meaning of Article 27 of the Law (hereafter "SIAG") must use in accordance with Article 42, paragraph (1) of the Law, as specified in CSSF Regulation 10-4 and Circular 11/512.

Consequently, the management of the risks linked to collateral must be an integral part of the risk management policy to be implemented by the risk management function of management companies and SIAGs under Articles 10, 13 and 43 of CSSF Regulation 10-4.

The complete list of criteria governing the receipt of collateral being used to reduce UCITS' counterparty risk exposure in OTC financial derivative transactions and efficient portfolio management techniques is included in Section XII. "Management of collateral for OTC financial derivative transactions and efficient portfolio management techniques" of the Guidelines.

The Guidelines revoke and replace the "Guidelines for competent authorities and UCITS management companies – Guidelines on ETFs and other UCITS issues (Ref. ESMA/2012/832EN)" implemented through CSSF Circular 13/559.

This Circular enters into force on 1 October 2014. As from this date, the amendments to the Guidelines apply pursuant to the transitional provisions indicated under paragraphs 71 and 72 of the said document.

COMMISSION for the SUPERVISION of the FINANCIAL SECTOR

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Appendix 1: Guidelines for competent authorities and UCITS management companies – Guidelines on ETFs and other UCITS issues (Ref. ESMA/2014/937EN)