

**Grand-Ducal Regulation of 8 February 2008 relating to certain definitions of the law of 20 December 2002 as amended concerning undertakings of collective investment and implementing the Directive 2007/16/EC of the European Commission 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 regards the clarification of certain definitions (Mémorial A 19 – 2008)**

(Non official translation of the French original)

Us Henri, Grand-Duc of Luxembourg, Duc of Nassau,  
Considering the Articles 1, 41 (4), 42 (4) und 44 (3) of the law of 20 December 2002 as amended concerning undertakings for collective investment;

Considering the Article 2 (1) of the law of 12 July 1996 reforming the Council of State and judging this urgent;

Based of the report of Our Ministry of the Treasury and Budget and after deliberation of the Council of Government;

Decide:

**Article 1. Subject matter**

This Regulation lays down rules clarifying the following terms of the law of 20 December 2002 as amended concerning undertakings for collective investments ("the law of 20 December 2002 as amended")

- 1) transferable securities, as defined in Article 1, item 26 [English version item 22] of the law of 20 December 2002 as amended;
- 2) money market instruments, as defined in Article 1, item 18 [English version item 14] of the law of 20 December 2002 as amended;
- 3) liquid financial assets, as referred to in the definition of undertakings for collective investment (UCITS) laid down in Article 2 paragraph (2) of the law of 20 December 2002 with respect to financial derivative instruments;
- 4) transferable securities and money market instruments embedding derivatives, as referred to in the fourth subparagraph of Article 42 paragraph (3) of the law of 20 December 2002 as amended;
- 5) techniques and instruments for the purpose of efficient portfolio management, as referred to in Article 42 paragraph (2) of the law of 20 December 2002 as amended;
- 6) index-replicating UCITS, as referred to in Article 44 paragraph (1) of the law of 20 December 2002 as amended.

**Article 2. Transferable securities**

- (1) The reference in Article 1, item 26 [English version item 22] of the law of 20 December 2002 as amended to transferable securities shall be understood as a reference to financial instruments which fulfil the following criteria:
  - a) the potential loss which the UCITS may incur with respect to holding those instruments is limited to the amount paid for them;
  - b) their liquidity does not compromise the ability of the UCITS to comply with Articles 11 (2), 28 (1) b) and 40 respectively of the law of 20 December 2002 as amended;
  - c) reliable valuation is available for them as follows:
    - (i) in the case of securities admitted to or dealt in on a regulated market as referred to in points (a) to (d) of Article 41(1) of the law of 20 December 2002 as amended, in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;
    - (ii) in the case of other securities as referred to in point (a) of Article 41 (2) of the law of 20 December 2002 as amended in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research;
  - d) appropriate information is available for them as follows:
    - (i) in the case of securities admitted to or dealt in on a regulated market as referred to in points (a) to (d) of Article 41(1) of the law of 20 December 2002 as amended in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security;
    - (ii) in the case of other securities as referred to in point (a) of Article 41(2) of the law of 20 December 2002 as amended in the form of regular and accurate information to the UCITS on the security or, where relevant, on the portfolio of the security;
  - e) they are negotiable;
  - f) their acquisition is consistent with the investment objectives or the investment policy, or both, of the UCITS pursuant of the law of 20 December 2002 as amended;

g) their risks are adequately captured by the risk management process of the UCITS.

For the purposes of points (b) and (e) and unless there is information available to the UCITS that would lead to a different determination, financial instruments which are admitted or dealt in on a regulated market in accordance with points (a), (b) or (c) of Article 41(1) of the law of 20 December 2002 as amended shall be presumed not to compromise the ability of the UCITS to comply with Articles 11 (2), 28(1) b) and 40 respectively of the law of 20 December 2002 as amended and shall also be presumed to be negotiable.

(2) Transferable securities as referred to in Article 1 , item 26 [English version item 22] of the law of 20 December 2002 as amended shall be taken to include the following:

- a) units in closed end undertakings for collective investment constituted as investment companies or as unit trusts which fulfil the following criteria:
  - (i) they fulfil the criteria set out in paragraph 1 of this Article;
  - (ii) they are subject to corporate governance mechanisms applied to companies;
  - (iii) where asset management activity is carried out by another entity on behalf of the closed end undertaking of collective investment, that entity is subject to national regulation for the purpose of investor protection;
- b) units in closed end undertakings for collective investment constituted under the law of contract which fulfil the following criteria:
  - (i) they fulfil the criteria set out in paragraph 1 of this Article;
  - (ii) they are subject to corporate governance mechanisms equivalent to those applied to companies as referred to in point (a)(ii);
  - (iii) they are managed by an entity which is subject to national regulation for the purpose of investor protection;
- c) financial instruments which fulfil the following criteria:
  - (i) they fulfil the criteria set out in paragraph 1 of this Article;
  - (ii) they are backed by, or linked to the performance of, other assets, which may differ from those referred to in Article 41 (1) of the law of 20 December 2002 as amended.

(3) Where a financial instrument covered by point (c) of paragraph 2 contains an embedded derivative component as referred to in Article 10 of this Regulation, the requirements of Article 42 of the law of 20 December 2002 as amended shall apply to that component.

### **Article 3. Instruments normally dealt in on the money market**

(1) The reference in Article 1 , item 18 [English version item 14] of the law of 20 December 2002 as amended to money market instruments as instruments shall be understood as a reference to the following:

- a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with points (a), (b) and (c) of Article 41(1) of the law of 20 December 2002 as amended;
- b) financial instruments which are not admitted to trading.

(2) The reference in Article 1 , item 18 [English version item 14] of the law of 20 December 2002 as amended to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to financial instruments which fulfil one of the following criteria:

- a) they have a maturity at issuance of up to and including 397 days;
- b) they have a residual maturity of up to and including 397 days;
- c) they undergo regular yield adjustments in line with money market conditions at least every 397 days;
- d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in points (a) or (b), or are subject to a yield adjustment as referred to in point (c).

### **Article 4. Liquid instruments with a value which can be accurately determined at any time**

(1) The reference in Article 1 , item 18 [English version item 14] of the law of 20 December 2002 as amended to money market instruments as instruments which are liquid shall be understood as a reference to financial instruments which can be sold at limited cost in an adequately short time frame, taking into account the obligation of the UCITS to repurchase or redeem its units at the request of any unit holder.

(2) The reference in Article 1 , item 18 [English version item 14] of the law of 20 December 2002 as amended to money market instruments as instruments which have a value which can be accurately determined at any time shall be

understood as a reference to financial instruments for which accurate and reliable valuations systems, which fulfil the following criteria, are available:

- a) they enable the UCITS to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction;
- b) they are based either on market data or on valuation models including systems based on amortised costs.

(3) The criteria referred to in paragraphs 1 and 2 of this Article shall be presumed to be fulfilled in the case of financial instruments which are normally dealt in on the money market for the purposes of Article 1, item 18 [English version item 14] of the law of 20 December 2002 as amended and which are admitted to, or dealt in on, a regulated market in accordance with points (a), (b) or (c) of Article 41(1) thereof, unless there is information available to the UCITS that would lead to a different determination.

#### **Article 5. Instruments of which the issue or issuer is regulated for the purpose of protecting investors and savings**

(1) The reference in Article 41(1)(h) of the law of 20 December 2002 as amended to money market instruments, other than those dealt in on a regulated market, of which the issue or the issuer is itself regulated for the purpose of protecting investors and savings, shall be understood as a reference to financial instruments which fulfil the following criteria:

- a) they fulfil one of the criteria set out in Article 3(2) and all the criteria set out in Article 4(1) and (2) of this Regulation;
- b) appropriate information is available for them, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account paragraphs 2, 3 and 4 of this Article;
- c) they are freely transferable.

(2) For money market instruments covered by the second and the fourth indents of Article 41(1)(h) of the law of 20 December 2002 as amended, or for those which are issued by a local or regional authority of a Member State or by a public international body but are not guaranteed by a Member State or, in the case of a federal State which is a Member State, by one of the members making up the federation, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in the following:

- a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;
- b) updates of the information referred to in point (a) on a regular basis and whenever a significant event occurs;
- c) the information referred to in point (a), verified by appropriately qualified third parties not subject to instructions from the issuer;
- d) available and reliable statistics on the issue or the issuance programme.

(3) For money market instruments covered by the third indent of Article 41(1)(h) of the law of 20 December 2002 as amended, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in the following information:

- a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;
- b) updates of the information referred to in point (a) on a regular basis and whenever a significant event occurs;
- c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.

(4) For all money market instruments covered by the first indent of Article 41(1)(h) of the law of 20 December 2002 as amended except those referred to in paragraph 2 of this Article and those issued by the European Central Bank or by a central bank from a Member State, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.

#### **Article 6. Establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those laid down by Community law**

The reference in the third indent of Article 41(1)(h) of the law of 20 December 2002 as amended to an establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those laid down by

Community law shall be understood as a reference to an issuer which is subject to and complies with prudential rules and fulfils one of the following criteria:

- 1) it is located in the European Economic Area;
- 2) it is located in the OECD countries belonging to the Group of Ten;
- 3) it has at least “investment grade” rating;
- 4) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by Community law.

#### **Article 7. Securitisation vehicles which benefit from a banking liquidity line**

(1) The reference in the fourth indent of Article 41(1)(h) of the law of 20 December 2002 as amended to securitisation vehicles shall be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.

(2) The reference in the fourth indent of Article 41(1)(h) of the law of 20 December 2002 as amended to banking liquidity lines shall be understood as a reference to banking facilities secured by a financial institution which itself complies with the third indent of Article 41(1)(h) of the law of 20 December 2002 as amended.

#### **Article 8. Liquid financial assets with respect to financial derivative instruments**

(1) The reference in Article 2(2) of the law of 20 December 2002 as amended to liquid financial assets shall be understood, with respect to financial derivative instruments, as a reference to financial derivative instruments which fulfil the following criteria:

- a) their underlyings consist in one or more of the following:
  - (i) assets as listed in the first indent of Article 41(1)(g) of the law of 20 December 2002 as amended including financial instruments having one or several characteristics of those assets;
  - (ii) interest rates;
  - (iii) foreign exchange rates or currencies;
  - (iv) financial indices;
- b) in the case of OTC derivatives, they comply with the conditions set out in the second and third indents of Article 41(1)(g) of the law of 20 December 2002 as amended.

(2) Financial derivative instruments as referred to in Article 41(1)(g) of the law of 20 December 2002 as amended shall be taken to include instruments which fulfil the following criteria:

- a) they allow the transfer of the credit risk of an asset as referred to in point (a) of paragraph 1 of this Article independently from the other risks associated with that asset;
- b) they do not result in the delivery or in the transfer, including in the form of cash, of assets other than those referred to in Article 41(1) and (2) of the law of 20 December 2002 as amended;
- c) they comply with the criteria for OTC-derivatives laid down in the second and third indents of Article 41(1)(g) of the law of 20 December 2002 as amended and in paragraphs 3 and 4 of this Article;
- d) their risks are adequately captured by the risk management process of the UCITS, and by its internal control mechanisms in the case of risks of asymmetry of information between the UCITS and the counterparty to the credit derivative resulting from potential access of the counterparty to non-public information on firms the assets of which are used as underlyings by credit derivatives.

(3) For the purposes of the third indent of Article 41(1)(g) of the law of 20 December 2002 as amended, the reference to fair value shall be understood as a reference to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

(4) For the purposes of the third indent of Article 41(1)(g) of the law of 20 December 2002 as amended, the reference to reliable and verifiable valuation shall be understood as a reference to a valuation, by the UCITS, corresponding to the fair value as referred to in paragraph 3 of this Article, which does not rely only on market quotations by the counterparty and which fulfils the following criteria:

- a) the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology;
- b) verification of the valuation is carried out by one of the following:
  - (i) an appropriate third party which is independent from the counterparty of the OTC-derivative, at an adequate frequency and in such a way that the UCITS is able to check it;

- (ii) a unit within the UCITS which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose.
- (5) The reference in Articles 2(2) and 41(1)(g) of the law of 20 December 2002 as amended to liquid financial assets shall be understood as excluding derivatives on commodities.

#### **Article 9. Financial indices**

- (1) The reference in point (g) of Article 41(1) of the law of 20 December 2002 as amended to financial indices shall be understood as a reference to indices which fulfil the following criteria:
- a) they are sufficiently diversified, in that the following criteria are fulfilled:
    - (i) the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
    - (ii) where the index is composed of assets referred to in Article 41(1) of the law of 20 December 2002 as amended, its composition is at least diversified in accordance with Article 44 of that law;
    - (iii) where the index is composed of assets other than those referred to in Article 41(1) of the law of 20 December 2002 as amended, it is diversified in a way which is equivalent to that provided for in Article 44 of that law;
  - b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled:
    - (i) the index measures the performance of a representative group of underlyings in a relevant and appropriate way;
    - (ii) the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;
    - (iii) the underlyings are sufficiently liquid, which allows users to replicate the index, if necessary;
  - c) they are published in an appropriate manner, in that the following criteria are fulfilled:
    - (i) their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;
    - (ii) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

(2) Where the composition of assets which are used as underlyings by financial derivatives in accordance with Article 41(1) of the law of 20 December 2002 as amended does not fulfil the criteria set out in paragraph 1 of this Article, those financial derivatives shall, where they comply with the criteria set out in Article 8(1) of this Regulation, be regarded as financial derivatives on a combination of the assets referred to in points (i), (ii) and (iii) of Article 8(1)(a).

#### **Article 10. Transferable securities and money market instruments embedding a derivative**

- (1) The reference in the fourth subparagraph of Article 42(3) of the law of 20 December 2002 as amended to transferable securities embedding a derivative shall be understood as a reference to financial instruments which fulfil the criteria set out in Article 2(1) of this Regulation and which contain a component which fulfils the following criteria:
- a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, a financial instrument price, a foreign exchange rate, an index of prices or rates, a credit rating or credit index, or another variable, and therefore vary in a way similar to a stand-alone derivative;
  - b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;
  - c) it has a significant impact on the risk profile and pricing of the transferable security.
- (2) Money market instruments which fulfil one of the criteria set out in Article 3(2) and all the criteria set out in Article 4(1) and (2) of this Regulation and which contain a component which fulfils the criteria set out in paragraph 1 of this Article shall be regarded as money market instruments embedding a derivative.
- (3) A transferable security or a money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.

### **Article 11. Techniques and instruments for the purpose of efficient portfolio management**

- (1) The reference in Article 42(2) of the law of 20 December 2002 as amended to techniques and instruments which relate to transferable securities and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria:
- a) they are economically appropriate in that they are realised in a cost-effective way;
  - b) they are entered into for one or more of the following specific aims:
    - (i) reduction of risk;
    - (ii) reduction of cost;
    - (iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules laid down in Article 43 of the law de 20 December 2002 as amended.
  - c) their risks are adequately captured by the risk management process of the UCITS.
- (2) Techniques and instruments which comply with the criteria set out in paragraph 1 and which relate to money market instruments shall be regarded as techniques and instruments relating to money market instruments for the purpose of efficient portfolio management as referred to in Article 42(2) of the law of 20 December 2002 as amended.

### **Article 12. Index replicating UCITS**

- (1) The reference in Article 44(1) of the law of 20 December 2002 as amended to replicating the composition of a stock or debt securities index shall be understood as a reference to replication of the composition of the underlying assets of the index, including the use of derivatives or other techniques and instruments as referred to in Article 42(2) of the law of 20 December 2002 as amended and Article 11 of this Regulation.
- (2) The reference in the first indent of Article 44(1) of the law of 20 December 2002 as amended to an index whose composition is sufficiently diversified shall be understood as a reference to an index which complies with the risk diversification rules of said Article 44.
- (3) The reference in the second indent of Article 44(1) of the law of 20 December 2002 as amended to an index which represents an adequate benchmark shall be understood as a reference to an index whose provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) The reference in the third indent of Article 44(1) of the law of 20 December 2002 as amended to an index which is published in an appropriate manner shall be understood as a reference to an index which fulfils the following criteria:
- a) it is accessible to the public;
  - b) the index provider is independent from the index-replicating UCITS.

Point (b) shall not preclude index providers and the UCITS forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.

### **Article 13. Final Provisions**

- (1) This present Regulation will enter into force four days following its publication in the Mémorial.
- (2) UCITS already in existence benefit from a time period until 23 July 2008 at the latest to comply with the provisions of this Regulation.
- (3) Any reference to this Regulation may be made under the abbreviated title “Grand-Ducal Regulation relating to certain definitions of the law of 20 December 2002 as amended concerning undertakings for collective investments”.

### **Article 14. Execution**

Our Ministry of the Treasury and Budget is responsible for the execution of the present regulation which will be published in the Mémorial.

The Ministry of Treasury and Budget, Château de Berg, 8 February 2008  
Luc Frieden Henri

Dir. 2007/16/EC