

Circular CSSF 08/372 of September 5, 2008, providing “guidelines for depositaries of specialised investment funds adopting alternative investment strategies, where these funds use the services of a prime broker” dated September 2008

Depositaries of Luxembourg funds – including SIFs - have a legal obligation of supervising the funds' assets.

This obligation, according to the old Circular 91/75, encompasses both an obligation of **localisation of the SIF's assets** (the depositary must know where and how the assets are located) and **an obligation of making sure that the correspondent banks entrusted with the safekeeping of the SIF's assets are of adequate financial surface, reputation and experience**.

These guidelines set by the CSSF regarding the depositary's obligations were not appropriate where a SIF utilises a prime broker for the reason that SIFs typically open accounts directly with the prime broker (thus bypassing the depositary) and the SIF's assets are, as a consequence, held in the network of correspondent banks of the prime broker, and not in that of the depositary. Proper supervision of those correspondent banks, and of the assets held with those banks, by the depositary was extremely difficult to achieve in this context.

New Circular 08/372 sets revised guidelines for depositaries of SIFs utilising prime brokers. In short, the new Circular removes the obligation of supervising the correspondent banks of the prime broker and of tracking the SIF's assets at the level of those correspondent banks, providing that proper selection of the prime broker has been made.

According to the new Circular, the depositary will satisfy its supervisory duties if it applies the following guidelines:

1. Acceptance of the choice of the prime broker

The depositary must accept the prime broker chosen by the SIF. It can only do so if the prime broker is

- a financial institution subject to the control of a supervisory authority of a state with a supervisory regime recognised to be equivalent to that provided by EU legislation and
- a recognised financial institution specialised in these types of operations.

2. Organisation of the relations between the depositary and the prime broker

The depositary must have a contractual right of information regarding the composition of the SIF's assets entrusted to the prime broker (composition and value of the SIF's assets).

Moreover, the depositary must have a contractual right of intervention regarding these assets (i.e. right to retrieve the assets from the prime broker if the depositary is of the opinion that it is not able anymore to fulfil its supervisory duties appropriately).

3. Additional mission of depositaries of SIF-FCP

In case of SIF-FCPs, the depositary has the additional mission to carry out all operations concerning the day-to-day administration of the FCP's assets.

The depositary does not need to know who the correspondents of the prime broker holding the assets of the SIF are.

4. Information to investors

Finally, the sales documents of a SIF using a prime broker must adequately describe the implication of the prime broker and the potential risks of this set-up.

Contacts

For further information, please contact the PricewaterhouseCoopers Luxembourg Investment Management experts:

Régis Malcourant

Partner
+352 49 48 48-5703

regis.malcourant@lu.pwc.com

Xavier Balthazar

Partner
+352 49 48 48-5779

xavier.balthazar@lu.pwc.com

PricewaterhouseCoopers

400, route d'Esch, B.P. 1443
L-1014 Luxembourg
Telephone +352 49 48 48-1
Facsimile +352 49 48 48-2900

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