

CSSF prohibition of loan investments for UCITS

Insights - 27/08/2020

On 7 August 2020, the Luxembourg supervisory authority for the financial sector, the CSSF, updated its frequently asked questions (the FAQ) on the Luxembourg law of 17 December 2010 on undertakings for collective investment (the 2010 Law), publishing a ninth version of its FAQ.

A new question - 1.13 of the FAQ - has been included pursuant to which it is asked whether loans constitute eligible investments for undertakings for collective investment in transferable securities (UCITS). The CSSF has answered that loans cannot be considered as eligible assets under Article 41 (1) and (2) (a) of the 2010 Law, as they do not qualify as:

- money market instruments within the meaning of Article 1 (23) of the 2010 Law and Articles 3 and 4 of the Grand-ducal regulation of 8 February 2008 relating to certain definitions of the amended law of 20 December 2002 on undertakings for collective investment and implementing Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to UCITS as regards the clarification of certain definitions (the **2008 GD Regulation**), further clarified by the CESR[1] Guidelines[2]; and
- transferable securities within the meaning of Article 1 (34) of the 2010 Law and Article 2 of the 2008 GD Regulation, further clarified by the CESR Guidelines.

In addition, the CSSF is requiring all Luxembourg UCITS which have invested in loans to divest from these positions by 31 December 2020. These divestments must be performed taking into account the best interest of investors.

Furthermore, the CSSF requires from these UCITS to organise the relevant amendments to their prospectuses by 31 March 2021 at the latest.

Should you have any additional questions, please contact Ogier in Luxembourg.

[1] Committee of European Securities Regulators, being the predecessor of European Securities and Markets Authority (**ESMA**)

[2] CESR guidelines concerning eligible assets for investment by UCITS, March 2007 (updated September 2008), Ref.: CESR/07-044b

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Meet the Author



[Anne-Gaëlle Delabye](#)

Partner

[Luxembourg Legal Services](#)

E: anne-gaelle.delabye@ogier.com

T: [+352 2712 2039](tel:+35227122039)

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