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CACEIS European Regulatory Watch Newsletter

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INVESTOR SERVICES

EUROPE

AIFMD - ESMA updates Q&A document on the application of the AIFMD

Background

The Alternative Investment Fund Managers Directive ("AIFMD") sets up a coherent framework for the regulation of alternative investment fund managers ("AIFMs") in Europe. Moreover, the AIFMD aims at ensuring that AIFMs are able to manage and market AIFs on a cross-border basis.

The European Securities and Market Authority ("ESMA") has issued and regularly updates a Q&A document aiming at promoting common supervisory approaches and practices in the application of the AIFMD and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the AIFMD.

What's in there?

On 26 March 2015, ESMA published updates to questions and answers on the AIFMD. In this version, one question has been updated and seven new questions have been added, in relation to the following topics:

REPORTING TO NCAS

With regard to the calculation of the reporting frequency for non-EU AIFMs, ESMA states that they should take into account all the EU AIFs that they manage and the AIFs that they market in the EU in order to calculate a unique reporting frequency applicable to all Member States where their AIFs are managed or marketed.

In relation to the reporting on the total long and short value of exposures before currency hedging, ESMA stresses that AIFMs should report this information for all the sub-asset types mentioned in questions 122 to 124 of the consolidated reporting template.

With respect to the reporting of stress test results, ESMA replies that these results should be reported only as long as this is required by the national private placement regime of the Member States where the AIFs are marketed or if the non-EU AIFMs have carried out such stress tests.

NOTIFICATION OF AIFMS

ESMA clarifies that managing a new AIF in the same host country is already covered by the existing notification and the AIFM does not need to submit a new notification. In the event that a new AIF is to be managed, only an update to the original notification should be sent to the host regulator.

CALCULATION OF LEVERAGE

ESMA confirms that, when calculating the exposure of an AIF in accordance with the gross method, AIFMs should exclude the value of all cash and cash equivalents held in the base currency of the AIF.

ADDITIONAL OWN FUNDS

ESMA stipulates that AIFMs should exclude investments by AIFs in other AIFs they manage for the calculation of additional own funds; however, they should not exclude investments by AIFs in other AIFs they manage when it comes to calculating additional own funds covering potential liability risks arising from professional negligence.

SCOPE

In relation to a potential authorisation requirement for non-EU AIFMs managing non-EU master AIFs, ESMA points at national law in the country transposing the AIFMD.

ESMA'S UPDATED Q&A DOCUMENT CAN BE FOUND HERE.

What's next?

The Q&A document is intended to be continuously edited and updated as and when new questions are received.

AIFMD - Commission specifies information to be provided to ESMA for the evaluation of the AIFMD passport

Background

Article 67(3) of the AIFMD (AVAILABLE HERE) requires the competent authorities of the EU Member States to provide ESMA with quarterly information on the AIFMs which are managing and/or marketing AIFs under their supervision, either under the application of the AIFMD passport regime or under their national regimes.

On 18 December 2014, the Commission adopted Commission Delegated Regulation (EU) 2015/514 on the information to be provided by competent authorities to ESMA pursuant to Article 67(3) of the AIFMD.

What's in there?

On 27 March 2015, Commission Delegated Regulation (EU) 2015/514 was published in the Official Journal of the European Union. It entered into force on 16 April 2015.

The objective of the Regulation is to enable ESMA to evaluate the functioning of the AIFMD passport for EU AIFMs managing or marketing EU AIFs in the EU, the operating conditions for AIFs and their managers and the potential impact of the extension of the AIFMD passport.

The Regulation thus specifies the content of the information that the competent authorities of the

EU Member States have to provide quarterly to ESMA in accordance with Article 67(3) of the AIFMD. This information will allow ESMA to analyse and assess the use of the AIFMD passport by AIFMs managing and/or marketing EU AIFs in the EU.

COMMISSION DELEGATED REGULATION (EU) 2015/514 IS AVAILABLE HERE.

What's next?

The Regulation entered into force on 16 April 2015. It is binding in its entirety and directly applicable in all EU Member States.

CRAs - ESMA publishes guidelines on periodic reporting for Credit Rating Agencies

Background

Under Article 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 (the "ESMA Regulation"), ESMA has the power to publish guidelines addressed to financial market participants in order to establish consistent and effective supervisory practices.

On 16 July 2014, ESMA published a consultation paper on guidelines concerning the information to be periodically submitted to ESMA by credit rating agencies ("CRAs") and received responses during Q3 2014.

What's in there?

On 23 March 2015, ESMA published its final guidelines on periodic information to be submitted to ESMA by CRAs. These guidelines apply to CRAs registered in the European Union, but not to certified CRAs, and provide details on:

1) the information that CRAs should regularly submit to ESMA to enable its ongoing supervision of CRAs on a consistent basis (submissions on a quarterly, semi-annual and annual basis);

2) the information that CRAs should submit for the calculation of the supervisory fees and the CRA market shares.

The required information should be submitted within one month following the end of the quarter concerned.

ESMA'S GUIDELINES ARE AVAILABLE HERE.

What's next?

The guidelines will be effective two months after their publication on ESMA's website in all the official languages of the European Union.

Following the entry into force of these guidelines, CESR's Guidance on the enforcement practices and activities to be conducted under Article 21.3(a) of the Regulation (ESMA/2010/944) of 30 August 2010 will no longer apply.

In accordance with Article 16(3) of the ESMA Regulation, financial market participants must make every effort to comply with the guidelines and recommendations.

ELTIFs - Council adopts ELTIF Regulation

Background

On 26 June 2013, the European Commission issued a proposal containing a draft Regulation on European Long-Term Investment Funds ("ELTIFs").

On 26 November 2014, a provisional agreement was reached between the European Parliament and the Council, while a final compromise text was issued on 5 December 2014.

On 16 February 2015, the European Parliament's Economic and Monetary Committee (ECON) issued a supplementary report introducing some changes to the proposed ELTIF Regulation.

On 10 March 2015, the European Parliament adopted its position at first reading in a plenary vote. This final position of the European Parliament did not deviate from the version adopted by the ECON Committee.

What's in there?

On 20 April 2015, the Council of the European Union adopted its position on the proposed ELTIF Regulation at first reading, on the basis of the agreement reached with the European Parliament in December 2014.

In its position, the Council approved the version of the draft Regulation previously adopted by the European Parliament (AVAILABLE HERE).

THE COUNCIL'S POSITION ON THE ELTIF REGULATION IS AVAILABLE HERE.

What's next?

The Regulation will enter into force on the 20th day following its publication in the Official Journal of the EU.

The Regulation will be enforceable six months after its entry into force.

Furthermore, after conducting a public consultation, ESMA will develop draft regulatory technical standards (RTS) to specify the common definitions, calculation methodologies and presentation formats of costs and will submit those draft RTS to the Commission 3 months after the date of entry into force of the Regulation.

EMIR - ESMA updates Q&A on EMIR

Background

ESMA publishes a regularly updated Q&A to address questions relating to the European Market and Infrastructure Regulation (EU) No 648/2012 (EMIR).

The Q&A is designed to provide clarity on the timing of implementation, the scope of the requirements and the position of third country CCPs and trade repositories.

The previous version of the ESMA Q&A was issued on 24 October 2014.

What's in there?

On 31 March 2015, ESMA issued updates to its EMIR Q&A (ESMA 2015/655).

This version includes amendments to the following sections:

OTC QUESTIONS:

- Intragroup transactions;
- Status of entities not established in the Union (i.e. sovereign wealth funds);
- Pension scheme exemption from clearing obligation - Article 2(10) and 89 of EMIR;
- Frontloading requirement for the clearing obligation - Article 4(1)(b)(ii) of EMIR;
- Type of trades covered by Article 4 (1) of EMIR;
- Third country contracts - responsibility/conditions/effect on existing trades.

CCP QUESTIONS:

- Authorisation of CCP (i.e. clarification that CCP is not authorised to provide a service that prevents its clearing members to clear contracts between each other);
- Segregation and portability (automatic payment of variation margins in respect of an individually segregated client account).

What's next?

The Q&A is intended to be continuously edited and updated as and when new questions are received.

MIFID II - ESMA consults on complex debt instruments and structured deposits under MiFID II

Background

Directive 2014/65/EU on markets in financial instruments ("MIFID II"; AVAILABLE HERE) and Regulation (EU) No 600/2014 on markets in financial instruments ("MIFIR"; AVAILABLE HERE) were approved by the European Parliament on 15 April 2014 and by the Council of the EU on 13 May 2014. The two texts were published in the Official Journal of the EU on 12 June 2014 and entered into force on 2 July 2014.

Article 25(10) of MiFID II requires ESMA to issue, by 3 January 2016, guidelines for the assessment of: (1) complex bonds, other forms of securitised debt and money market instruments; and (2) complex structured deposits.

What's in there?

On 24 March 2015, ESMA published a consultation paper to obtain stakeholders' views on the complexity of debt instruments and structured deposits under MiFID II.

ESMA's consultation paper contains draft guidelines on the above matter, aiming at the correct classification of debt instruments and structured deposits as either "complex" or "non-complex".

Section I.2 of the consultation paper discusses specifically debt instruments embedding a derivative, which are automatically considered to be complex under MiFID. ESMA lists examples of debt instruments that are generally deemed to embed a derivative (e.g. convertible and exchangeable bonds, indexed bonds, callable or puttable bonds, credit-linked bonds, warrants).

Section I.3 addresses the concept of the complexity of debt instruments and gives certain non-exhaustive examples of types of debt instruments generally considered to be complex (e.g. asset-backed securities, subordinated debt instruments, certificates, debt instruments with an unfamiliar or unusual underlying) and non-complex (e.g. floating-rate notes, covered bonds).

Similarly, ESMA sets out its position as regards the complexity of structured deposits in terms of understanding the risk of return and the cost of exiting before term (sections I.4 and 1.5). Non-exhaustive examples are given for either case (e.g. more than one variable affects the return received; an unfamiliar or unusual variable is involved in the calculation of the return; exit penalty that is not a fixed sum or a percentage of the original sum invested).

Finally, the draft guidelines proposed by ESMA are set out in Annex IV.

ESMA'S CONSULTATION PAPER CAN BE FOUND HERE.

What's next?

ESMA will consider all stakeholders' contributions received by 15 June 2015 in order to publish final guidelines in Q4 2015.

MiFID II, MiFIR and their implementing measures will be applicable as from 3 January 2017.

UCITS - ESMA publishes updates to Q&A on the KIID

Background

Key Investor Information Documents (KIIDs) for UCITS are regulated by Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council concerning key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (THE "KIID REGULATION", AVAILABLE HERE).

Furthermore, the European Securities and Markets Authority (ESMA) has put together and regularly updates a questions and answers (Q&A) document as a practical convergence tool used to promote common supervisory approaches and practices in the field of KIIDs for UCITS.

The Q&A is destined to competent authorities in the EU to ensure that their application of the relevant rules converges along the lines of the responses given by ESMA. Moreover, the Q&A is intended to help UCITS management companies by providing clarity as to the content of these rules.

What's in there?

On 26 March 2015, ESMA published updated questions and answers (Q&A) on UCITS KIIDs.

The updated Q&A includes a new question (Question 4g) on the treatment of past performance information in case of UCITS mergers, where the receiving UCITS is a newly established UCITS with no performance history. ESMA's position in this regard is that UCITS should use the past performance of the merging UCITS in the KIID of the receiving UCITS if the competent authority of the receiving UCITS reasonably assesses that the merger does not impact the UCITS' performance. Furthermore, ESMA expects the performance of the UCITS to be impacted if there is, inter alia, a change in the investment policy or in the entities involved in the investment management. Finally, ESMA notes that it should be made clear in the KIID of the receiving UCITS that the performance is that of the merging UCITS.

THE UPDATED Q&A DOCUMENT IS AVAILABLE HERE.

What's next?

ESMA's Q&A document is intended to be continually edited and updated as and when new questions are received.

ESMA launches centralised data projects for MiFIR and EMIR

Background

On 12 June 2014, MiFIR was adopted by the European Parliament and the Council. MiFIR encompasses rules on execution venues, transaction execution as well as pre- and post-trade transparency, notably with regard to OTC derivatives.

On 4 July 2012, EMIR was adopted by the European Parliament and the Council. EMIR ensures, inter alia, that information on all European derivative transactions will be reported to trade repositories and be accessible to supervisory authorities, including the ESMA, in order to give policy makers and supervisors a clear overview of what is going on in the markets.

Under the above regulations, a number of NCAs have delegated to ESMA the provision of a central facility in relation to instrument and trading data and the calculation of the MiFIR transparency and liquidity thresholds as well as the establishment of a single access point to trade repositories data under EMIR.

What's in there?

Following this delegation, ESMA launched on 1 April 2015 two important projects, namely:

- The Instrument Reference Data Project : the Instrument will collect data directly from approximately 300 trading venues across the EU, which will send their MiFIR/MAR data to ESMA so that it can perform and publish the necessary transparency and liquidity threshold calculations. Once finalised, the database will allow NCAs and financial market participants to have access to all data for financial instruments admitted to trading on EU regulated markets or traded on MiFID venues (OTFs and MTFs);
- The Trade Repositories Project will provide ESMA and 27 NCAs with immediate access, through a single platform, to the 300 million weekly reports on derivatives contracts received from 5000 different counterparties across the EU trade repositories.

Introducing these unified systems in support of the single market will result to economies of scale -compared to the alternative of having separate national systems - and will subsequently lower the burden on EU taxpayers.

ESMA'S PRESS RELEASE ON ITS CENTRALISED DATA PROJECTS CAN BE FOUND HERE.

What's next?

The projects are currently being developed by ESMA. The Instrument Reference Data Project is expected to go live in early 2017, while the Trade Repositories Project will go live in 2016.

SFT - Commission publishes proposal for a regulation on securities financing transactions (SFTs)

Background

Securities financing transactions (SFTs) have been identified by the European Commission as a source of contagion and leverage during the recent financial crisis (see the Commission's Communication on Shadow Banking available here). As such, the Commission considers that they require enhanced monitoring.

SFTs include lending or borrowing securities and commodities, repurchase (repo) or reverse repurchase transactions and buy-sell back or sell-buy back transactions.

What's in there?

On 29 January 2014, the Commission adopted a proposal for a regulation aiming at enhancing financial stability in the EU by increasing the transparency of SFTs, rehypothecation and other financing structures having equivalent economic effect as SFTs, as they take place in the less regulated shadow banking sector.

The draft regulation applies to all counterparties in SFT markets, investment funds (UCITS and AIFs) and any counterparty engaging in rehypothecation. It covers all financial instruments provided as collateral, as listed in Annex I Section C of MiFID.

The draft regulation aims at improving SFT transparency in three ways:

1) It requires the details of all SFTs to be reported to a central database (trade repositories). This would allow EU regulators to better track the links between banks and shadow banking entities, obtain more information on some of their funding operations and better monitor the build-up of systemic risks.

2) It requires investment funds engaged in SFTs to provide detailed reporting on such operations both in their pre-investment documents (e.g. the prospectus) and in their regular reports.

3) Its sets minimum conditions for the rehypothecation of financial instruments, including a written agreement and prior consent.

THE COMMISSION'S DRAFT REGULATION IS AVAILABLE HERE.

What's next?

The draft regulation is currently at a first reading stage by the European Parliament.

The ECON Committee of the European Parliament tabled its report containing amendments to the Commission's proposal on 9 April 2015 (AVAILABLE HERE).

The proposal has been put in the agenda of the European Parliament's plenary session on 8 September 2015 (indicative date).

FRANCE

SOLVENCY II - Publication in the Official Journal

Background

On April 3rd 2015, Regulation n° 2015-375 of April 2nd 2015 was published in the Official Journal of the French Republic (J.O.R.F.). This Regulation is implementing Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

What's in there?

Solvency II Directive introduces the following obligations :

- Compliance to new solvency rules;
- Setting up new requirements regarding governance and risk management;
- Obligations for reporting publication to the Autorité de Contrôle Prudientel et de Résolution (ACPR) and to investors.

What's next?

The entry into force of Solvency II Directive is scheduled for January 1st, 2016.

LUXEMBOURG

Bearer shares - CSSF sheds more light on the application of the law on the immobilisation of bearer shares

Background

The law of 28 July 2014 on the immobilisation of bearer shares and units ("THE LAW"; AVAILABLE HERE) was published in the Mémorial on 14 August 2014 and entered into force on 18 August 2014.

Following the Financial Action Task Force's recommendations, it imposes two main obligations: (1) the obligation for issuers impacted by the Law to appoint a depositary; and (2) the obligation for any holder of bearer shares or units to deposit those with such depositary. The Law therefore gives an end to the free transfer of bearer shares or units by physical delivery of the certificate in order to ensure the proper identification of the holders of bearer shares or units.

On 30 December 2014, the CSSF published a first Frequently Asked Questions (FAQ) document on the Law, focusing on investment funds established in Luxembourg as issuers of bearer shares or units.

What's in there?

On 27 March 2015, the CSSF issued a press release to provide further guidance to bearer shareholders/unitholders and issuers as regards the application of the Law.

First of all, the CSSF highlights that no action is to be undertaken in relation to bearer shares/units booked in securities accounts and not physically in the hands of their holders.

Furthermore, the CSSF gives concrete clarifications on the following topics:

(1) Securities concerned by the Law

The CSSF specifies the conditions for securities to fall within the scope of the Law: (a) issuer with registered office in Luxembourg; (b) individualised physical form; (c) bearer form.

In addition, the CSSF admits that certain securities fall out of the scope of the Law: (a) units of securitisation funds; (b) ADR, ADS and GDR certificates; (c) bearer shares or units deposited in a securities settlement system and represented by a global certificate or by securities in individualised physical form.

(2) Actions to be undertaken by the bearer shareholder/unitholder

The CSSF proposes to the holders of securities falling within the scope of the Law alternative solutions in order to comply with the Law and to avoid losing their shareholder/unitholder rights: (a) deposit of the bearer securities in a securities account; or (b) transformation of the bearer securities into registered and/or dematerialised securities;

or (c) immobilisation of the bearer securities at the appointed depositary.

(3) Actions to be undertaken by the issuer

The CSSF advises issuers of bearer securities to provide clear and complete information to bearer shareholders as regards the implementation of the Law and to give them the possibility to transform their bearer securities to registered and/or dematerialised securities. If the bearer shareholders do not opt for the transformation of their securities, issuers should assist them in depositing their bearer securities with the appointed depositary.

As regards UCIs in particular, the CSSF adds that these issuers should inform their investors about the Law either by way of a notice to the shareholders/unitholders or through a relevant notice in the invitation to the next general meeting (only for SICAVs/SICAFs).

(4) CSSF supervision of compliance with the Law

As the eligible depositaries under the Law fall within the scope of the CSSF's prudential supervision, compliance with the Law will be monitored through the means already at the disposal of the CSSF. The specific obligations of the depositaries under the Law (e.g. reporting obligations) will be determined by the CSSF according to the entity concerned. The same will apply to issuers under the supervision of the CSSF (e.g. investment funds).

THE CSSF PRESS RELEASE IS AVAILABLE HERE.

What's next?

The CSSF is likely to provide further guidance on the interpretation and practical application of the Law in the future.

UCITS - CSSF extends deadline for compliance with Circular CSSF 14/587 on UCITS depositaries

Background

Circular CSSF 14/587 (AVAILABLE HERE) was published by the CSSF on 11 July 2014. It addresses all credit institutions acting as depositaries for UCITS funds subject to Part I of the law of 17 December 2010 on undertakings for collective investment. UCITS funds and UCITS management companies are also directly concerned by the Circular, as regards their interaction with the UCITS depositary.

The purpose of the Circular is to clarify the provisions of the law of 17 December 2010 regarding UCITS depositaries and to lay down further organisational requirements to be put in place by UCITS depositaries, UCITS funds and UCITS management companies in order to regulate their mutual interaction. Furthermore, the Circular aims at aligning the regulatory framework applicable to UCITS depositaries with the relevant requirements of the AIFMD as regards AIF depositaries.

In its original version, the Circular required all entities falling within its scope of application to comply with its provisions by 31 December 2015 the latest.

What's in there?

On 23 March 2015, the CSSF published Circular CSSF 15/608 (hereinafter: the "Circular") amending Circular CSSF 14/587 as regards the deadline for compliance with its provisions. The final date for compliance has been postponed from 31 December 2015 to 18 March 2016.

The CSSF took into account the fact that deadline for transposing the UCITS V Directive by the EU Member States is 18 March 2016 and that the delegated acts implementing the UCITS V Directive will not be published until the second or third quarter of 2015.

THE NEW CIRCULAR CSSF 15/608 IS AVAILABLE HERE.

What's next?

The CSSF explicitly states in the Circular that it will amend Circular CSSF 14/587 in due time in order to bring it into alignment with the UCITS V Directive and the relevant delegated acts. These changes will become effective on 18 March 2016.

UCITS - ALFI responds to ESMA's Discussion Paper on UCITS share classes

Background

On 23 December 2014, the European Securities and Markets Authority ("ESMA") published a Discussion Paper on UCITS share classes in which it expressed its views on what constitutes a UCITS share class, how to distinguish UCITS share classes from sub-funds of UCITS and possible approaches to share class differentiation.

What's in there?

On 27 March 2015, ALFI published its response to ESMA's Discussion Paper on UCITS share classes, making the following main comments:

- Concerning whether share classes of the same UCITS should all share the same investment strategy : ALFI considers that this should be the case to the extent that, as there is no harmonised EU definition of this notion, this means that there is a common pool of assets reflecting the policy of the relevant UCITS sub-fund. Furthermore, specific differences should be authorised on top of this same investment strategy, in order to protect investors from negative impacts like currency exchange risk and interest rate risk.
- ALFI believes that duration hedged share classes should be allowed, as they have the same investment policy and follow the same principles as the currency hedged share classes. ALFI therefore suggests that focus should instead be put on appropriate risk warnings being inserted in prospectuses. Information on transactions at share class level should also be more detailed in annual reports.
- ALFI adds that there should be no exhaustive list of compatible share classes, since the creation of share classes responds to requests from investors.
- Regarding whether there should be an ESMA common position on the issue, ALFI expresses the view that the creation of share classes should remain subject to a case-by-case assessment by

supervisory authorities. In any event, existing share classes should not be impacted by any decision taken by ESMA.

ALFI'S RESPONSE TO ESMA'S DISCUSSION PAPER IS AVAILABLE HERE.

What's next?

The consultation closed on 27 March 2015.

ESMA will take into account the feedback received from stakeholders in order to consider whether it should develop a common position on the matter.

CSSF draws attention to the risks of outsourcing the compilation, distribution and consultation of management board/ strategic documents

Background

According to the CSSF, there are currently several service providers offering systems that allow the compilation, distribution and consultation of management board/strategic documents. CSSF-supervised entities often outsource these tasks to such service providers, which host and operate the infrastructure on which the data is stored.

However, these service providers do not necessarily have the license of a support PFS and may not even be based in Luxembourg.

What's in there?

On 16 April 2015, the CSSF issued the new Circular CSSF 15/611 in order to draw the attention of CSSF-supervised entities to the risks inherent to the outsourcing of systems allowing the compilation, distribution and consultation of management board/strategic documents. These risks include in particular the presence of sensitive data in such documents (e.g. documents to be analysed during a merger/acquisition process).

In the Circular, the CSSF clearly states that it is up to each entity to decide whether its data will be hosted and operated by a service provider through outsourcing. However, it should perform a thorough prior due diligence, especially as regards security aspects.

As a reminder, the CSSF stresses out that CSSF-supervised entities are prohibited from disclosing confidential information to service providers who are not subject to professional secrecy obligations (e.g. names of investors or clients).

Finally, the CSSF clarifies that the activity of the compilation, distribution and consultation of management board/strategic documents is a core activity of domiciliation agents. As a result, they are required to choose a service provider that complies with the conditions set out in Circular CSSF 05/178 concerning the outsourcing of IT services to third parties.

CIRCULAR CSSF 15/611 IS AVAILABLE HERE.

NETHERLANDS

Consultation on the Amendment of 2016 Financial Markets Decision

Background

On 31st March 2016, the Dutch Ministry of Finance published a consultation of the Amendment decision financial markets 2016 (Wijzigingsbesluit financiële markten 2016) ("the Decision"). Market parties had until 29 April 2015 to respond.

What's in there?

The Decision contains rules on crowd funding and rules on provisions. Amongst others it is proposed that a seller of investment insurances is no longer allowed to receive a compensation from managers of investment institutions.

What's next?

The proposed entrance date of the decision is 1 January 2016.

Subjects that have the special attention of the Dutch Supervisory Authority will be made public later.

TAX

OECD Public Discussion Draft on Action 12 of the Base Erosion and Profit Shifting Action Plan agreed with the G20.

Background

On 31 March 2015, the OECD published a discussion draft on Action 12 of the Base Erosion and Profit Shifting Action Plan agreed with the G20 countries. Multinational companies should consider the details on disclosure of tax planning arrangements to tax authorities and, in particular, the potential extension of existing regimes to incorporate international tax arrangements.

What's in there?

Action 12 contains recommendations for the design of rules providing for disclosure of what is perceived as aggressive tax planning.

Action 12 specifically includes:

- Design of mandatory disclosure rules or a mandatory disclosure regime;
- A focus on international tax schemes;
- Coordination with work on cooperative compliance;
- Enhanced models of information sharing between tax administrations.

The current discussion draft deals primarily with the first two elements of this package. The others will be addressed in due course, partly under BEPS and partly under other initiatives.

THE PUBLIC DISCUSSION DRAFT OF THE OECD ON BEPS ACTION 2 IS AVAILABLE HERE.

What's next?

Changes in international tax standards and other promised increases in cooperation between jurisdictions and alternative methods for addressing avoidance activity also suggest that a serious review of the costs and potential benefits is needed before the recommendation of any new disclosure regime for international tax arrangements.

AEOI - CSSF recalls obligations linked to the automatic exchange of fiscal information

Background

On 3 December 2012, the CSSF issued a letter/circular regarding the "Private Wealth Management Charter of Quality" of the International Capital Market Association ("ICMA") in order to raise awareness among Luxembourg regulated entities as regards the automatic exchange of information on tax matters and their duty to put in place relevant procedures and infrastructure.

What's in there?

On 27 March 2015, the CSSF published the new Circular CSSF 15/609 in order to remind Luxembourg regulated entities their obligations in the context of the Automatic Exchange Of Information (AEOI) on tax matters and to draw their attention to the latest relevant regulatory developments:

AMENDMENTS TO THE EU SAVINGS DIRECTIVE (EUSD) AND ADOPTION OF THE LAW OF 25 NOVEMBER 2014

The Luxembourg law of 25 November 2014 amended the law of 21 June 2005 (EUSD transposition law) and introduced (as from 1 January 2015) the automatic exchange of information regarding interest payments made by paying agents established in Luxembourg to natural persons resident in other EU Member States. Paying agents have up to 20 March 2016 to report information on 2015 income.

AMENDMENTS TO THE DIRECTIVE ON ADMINISTRATIVE COOPERATION (DAC)

The amendment of the DAC constitutes the second step in establishing an automatic exchange of information system, as the scope of the revised DAC is wider than the one of the EUSD (e.g. interests, dividends, account balances, proceeds of sales of financial assets, etc.). Moreover, the DAC applies not only to natural persons, but also to legal persons, associations with legal capacity but without legal personality and other legal arrangements subject to DAC taxes.

The CSSF also includes a reminder that the automatic exchange of information under the DAC will apply to information referring to taxable periods as from 1 January 2016.

FUTURE "MONEY LAUNDERING" DIRECTIVE

The CSSF informs the supervised entities concerned that the scope of the predicate money laundering offences will be extended to some fiscal criminal offences.

CIRCULAR CSSF 15/609 IS AVAILABLE HERE.

What's next?

In order to comply with the regulatory developments mentioned above, the CSSF asks supervised entities to be proactive and to fully cooperate with the competent authorities without any delay.

Dutch Advocate General's opinion: a Luxembourg SICAV is not entitled to a refund of Dutch dividend withholding tax

Background

On 3 April 2015, the Dutch Supreme Court Advocate General Wattel advised the Dutch Supreme Court to rule that a Luxembourg SICAV is not comparable to a Dutch Fiscal Investment Institution. Therefore, a Luxembourg SICAV should not be entitled to a refund of Dutch dividend withholding tax.

What's in there?

One of the issues discussed in the Advocate General's opinion is whether it is relevant that the distributions of the SICAV itself are subject to Dutch dividend withholding tax. Contrary to an earlier decision of the Court of Appeals, the Advocate General is of the opinion that the Luxembourg SICAV is not comparable to a Dutch Fiscal Investment Institution solely because the distributions of the SICAV are not subject to Dutch dividend withholding tax.

A few issues which were not addressed relate mainly to the distribution requirement. In case a Dutch Fiscal Investment Institution with distribution shares allocates the profits to its capital account, the distribution requirement could be met.

What's next?

The Advocate General's opinion is not binding for the Dutch Supreme Court.

The Dutch Supreme Court is expected to render a judgment in this case before the end of 2015.

Scanning

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