

New CSSF communication in the context of Brexit for UK AIFMs



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The CSSF has issued on 11 October 2019 a new press release (Press Release 19/48) in the context of Brexit and related mandatory communication by UK alternative investment fund managers (AIFMs) of Luxembourg regulated or unregulated alternative investment funds (AIFs).

This press release contains two communications on: (i) UK AIFMs which have not yet submitted a notification through the CSSF dedicated Brexit portal to benefit from a transitional period further to CSSF Press Release 19/41 and (ii) UK AIFMs which have already submitted a notification through the CSSF dedicated Brexit portal.

1- In its first communication, the CSSF draws the attention that, in case of a hard Brexit on 31 October 2019, UK AIFMs which have not submitted a notification through the CSSF dedicated Brexit portal will not be authorised to continue their activities under the transitional period and they will be considered as “third-country managers” as of 1 November 2019, with as a consequence the loss as from such date of the benefit of their existing passporting rights under Directive 2011/61/EU.

In order to validly act as third-country managers of their Luxembourg AIFs as of such date, the CSSF requires that these UK AIFMs must (i) obtain the consent of their Luxembourg AIFs’ investors and (ii) notify the CSSF before 31 October 2019 as follows:

- i- UK AIFMs will only be able to act as third-country managers of Luxembourg AIFs which are exclusively available to professional investors or Well-Informed Investors (as defined under article 2 of the Luxembourg act of 23 July 2016 on reserved alternative investment funds. i.e. no retail investors);
- ii- The consent of such investors must be obtained in accordance with the relevant rules prescribed for the amendment of the relevant AIFs’ constitutive documents and the relevant consent notices sent to investors must clearly indicate the possible outcomes and potential

consequences of such vote;

iii-The UK AIFM must notify the CSSF by email at brexitopc@cssf.lu including the following documents:

A duly signed confirmation from the UK AIFM that all direct and indirect investors in the relevant AIF(s) qualify as professional investors or Well-Informed Investors;

A copy of the appropriate resolutions evidencing the approval of the professional investors or Well-Informed Investors, duly signed (or when circumstances justify a delay, an explanation of such circumstances together with a copy of the appropriate convening notice duly sent to the investors).

In case of non-compliance with the above, such UK AIFMs which have not submitted a notification through the CSSF dedicated Brexit portal will be considered by the CSSF as being in breach of applicable requirements on the Luxembourg territory as of the day of the hard Brexit. It should be noted that the CSSF reserves the right to publish a list of those UK AIFMs in due time.

2- In its second communication, the CSSF provides that UK AIFMs which have submitted a notification through the CSSF dedicated Brexit portal may recall such notification and request to be considered as third-country managers for their Luxembourg AIFs after the occurrence of a hard Brexit. For this purpose, UK AIFMs must obtain the relevant investors' consent of their Luxembourg eligible AIFs and notify the CSSF under the conditions set out under section 1 above (please note that an additional item must be notified to the CSSF in this context which consists in providing the CSSF with a duly signed confirmation that the notification submitted through the CSSF Brexit dedicated portal should be rescinded) before 31 October 2019. It is important to note that such AIFMs which opt for the third-country regime will lose their right to benefit from the transitional period and must therefore comply before 31 October 2019 with the relevant requirements set out above.