

CSSF Clarifies Eligibility to Open Cash Accounts for Luxembourg AIFs

On 18 October 2022, the CSSF issued a press release¹ clarifying the types of entities that are eligible to open and hold the cash accounts of Luxembourg alternative investment funds ("AIFs").

Background

Article 19 of the law of 12 July 2013 on alternative investment fund managers², as amended (the "AIFM Law") requires a single depositary to be appointed to each AIF. Typically, this depositary must be a credit institution or an investment firm within the meaning of the law of 5 April 1993 on the financial sector³, as amended ("1993 Law").

However, for closed-ended AIFs that have no redemption rights exercisable during a period of five years from the date of the initial investments and which generally do not invest in assets that must be held in custody or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies, the depositary may also be an entity that has the status of a 'professional depositary of assets other than financial instruments' ("PDAOFI") within the meaning of Article 26-1 of the 1993 Law.

CSSF Clarification

The CSSF has observed an increasing number of AIFs, notably AIFs that have appointed a

PDAOFI as their depositary, using the services of electronic money institutions ("EMI") or payment institutions ("PI") governed by the law of 10 November 2009 on payment services⁴, as amended or Directive (EU) 2015/2366 on payment services in the internal market⁵ for the purpose of holding the cash account(s) of AIFs. As a result, the CSSF considered it imperative to clarify its position on the types of entities that are eligible to open and hold cash accounts for AIFs.

The CSSF has now confirmed that, in accordance with Article 19(7) of the AIFM Law, Article 86(a) of the Commission Delegated Regulation (EU) 231/2013⁶ and points (a), (b) and (c) of Article 18(1) of the Directive 2006/73/EC⁷, only central banks, EU-authorized credit institutions as well as third-country authorised banks (each an "Eligible Entity") may qualify as eligible entities for the purpose of holding cash accounts in the relevant market where cash accounts are required for the purposes of an AIF's operations.

Action Needed

In light of the above, AIFMs and / or depositaries are advised to analyse the existing cash account arrangements for each AIF they manage or that they act as a depositary, respectively. They should also take appropriate steps to ensure that as soon as possible and no later than 30 June 2023:

¹ <https://www.cssf.lu/en/2022/10/clarification-by-the-cssf-regarding-eligible-entities-for-the-opening-of-cash-accounts-in-relation-to-luxembourg-alternative-investment-funds-aifs/>

² <https://www.cssf.lu/en/Document/law-of-12-july-2013-2/>

³ <https://www.cssf.lu/en/Document/law-of-5-april-1993/>

⁴ <https://www.cssf.lu/en/Document/law-of-10-november-2009/>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>

⁶ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:083:0001:0095:en:PDF>

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0073&from=EN>

- a depositary within the meaning of Article 19(3)(i) of the AIFM Law is appointed; and
- an Eligible Entity is appointed in relation to the opening and holding of each AIF's cash account(s).

The CSSF further confirmed that the cash account(s) of any new AIF must be opened and held by an Eligible Entity.

Additionally, no new sub-fund within an existing AIF may be set up where such AIF's cash accounts are held by an EMI or a PI.

How the Maples Group Can Help

The Maples Group is assisting clients with the review of their existing cash account arrangements and identifying alternative solutions to ensure they comply by 30 June 2023.

If you would like further information, please liaise with the below or your usual Maples Group contact.

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