

Application of MiFID to Luxembourg Investment Fund Managers



On 10 June 2021 the Luxembourg Financial Regulator (CSSF) published an FAQ on the application of the Markets in Financial Instruments Directive (MiFID) to Luxembourg Investment Fund Managers (IFMs). The CSSF's FAQ clarifies under what circumstances and to what extent MiFID applies to IFMs, their third-party delegates, and their investment advisers. The new FAQ has been included in the [FAQ concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment](#), section 10, and the [FAQ concerning the Luxembourg Law of 12 July 2013 on alternative investment fund managers \(AIFMs\)](#), section 26.

The key clarifications provided by the CSSF are the following:

Collective portfolio management

IFMs and their undertakings for collective investment (UCIs) are exempted from the scope of MiFID when performing the functions included in the collective portfolio management themselves.

This exemption, however, does not cover the functions of collective portfolio management (1) undertaken by an authorised IFM under a delegation arrangement from another authorised IFM or, (2) delegated by an authorised IFM to a third party.

Performance of functions by another delegate IFM

If the functions of collective portfolio management are undertaken by another delegate IFM, the delegate IFM, must in principle, depending on the tasks performed, be authorised to provide discretionary portfolio management and non-core services (such as investment advice, administration of units of UCIs or, for an authorised AIFM, reception and transmission of orders). The delegate IFMs are not subject to the full scope of MiFID rules, but they cannot provide other MiFID services or activities apart from those for which they are authorised.

Services rendered by third parties

If the IFM delegates to a third party the functions of collective portfolio management, the IFM becomes the third party's client.

The third-party delegate may then be subject to the MiFID rules if (1) the service rendered qualifies as an investment service or an activity under Annex I of MiFID, (2) the service relates to transactions on financial instruments as defined under section C of Annex I of MiFID; and (3) the service is rendered by a third party established in the EU or is considered to be rendered in Luxembourg by a third party established outside of the EU.

Marketing of funds

If the authorisation of an IFM includes the marketing function, the IFM can perform the marketing for the funds under its management.

If the IFM does not perform the marketing function itself, the MiFID rules may apply to the entity undertaking the marketing function depending on where and to whom the funds are distributed.

Any Luxembourg IFM that markets funds that it does not directly manage on behalf of another IFM, acts as an intermediary just like any investment firm covered by MiFID and must, therefore, have an authorisation which covers the type of fund and services offered.

Investment advice

Investment advice is not included in the activity of collective portfolio management.

The MiFID rules apply in principle to investment advisors when they provide investment advice to an IFM, provided their investment advice is related to financial instruments.

An IFM may only provide investment advice to another IFM, if it is specifically authorised to provide investment advice.



MiFID exemptions

Third parties providing investment services to IFMs may benefit from specific exemptions, such as an intra-group service exemption, or partial exemptions. In any case, the third parties must be able to demonstrate that they fall within the scope of an exemption, should they provide services without an authorisation under the MiFID applicable framework.

Next steps

IFMs are expected to comply with the CSSF FAQ as soon as possible and by 31 December 2021 at the latest, considering the best interests of investors.

Consequently, IFMs should as soon as possible analyse their organisation model in order to assess:

- the need for an additional authorisation to provide services as mentioned above (so-called “top-up license”);
- appropriate compliance, by any third country entity acting as their delegate or undertaking services on their behalf, with the third country regime.

For more information and assistance on this topic, please feel free to reach out to the contacts listed on this article or your usual Luther S.A. contact.

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