

# Updated CSSF FAQs on UCI Law and MMF Regulation: Change of regulatory practice concerning the holding of ancillary liquid assets by UCITS

On 3 November 2021, the CSSF has announced in its [Press Release 21/26](#) that it has published updated versions of (i) its FAQs on the Luxembourg law of 17 December 2010 relating to undertakings for collective investment ("[FAQs on UCI Law](#)"), and (ii) its FAQs on Regulation (EU) 2017/1131 on money market funds ("[FAQs on MMF Regulation](#)").

These updates aim at formalising and clarifying the new position of the CSSF as regards the conditions and the extent to which Luxembourg UCITS and money market funds ("[MMFs](#)") under the MMF Regulation are allowed to hold ancillary liquid assets. In this context, the CSSF also clarifies some aspects of UCITS and MMFs diversification rules.

The Press Release provides that compliance by UCITS with the conditions described in these FAQs is expected as soon as possible and by **31 December 2022 at the latest**.

## I. What is new?

### 1. CSSF FAQs on UCI Law

The most important changes and clarifications introduced into the CSSF FAQs on UCI Law concern the following interpretation, conditions and limit applicable to the holding of "ancillary liquid assets" by Luxembourg UCITS (or compartment(s) thereof) under Article 41(2)b) of the UCI Law:

- such ancillary liquid assets should be limited to bank deposits at sight only, such as cash held in current accounts with a bank accessible at any time, in order to cover current or exceptional payments, or for the time necessary to reinvest in UCITS eligible assets in line with the UCITS' investment policy or for a period of time strictly necessary in case of unfavourable market conditions;

- a Luxembourg UCITS can only hold such ancillary liquid assets up to 20% of its NAV (instead of 49% of its NAV under the previous CSSF regulatory practice);
- a temporary breach of the above 20% limit is acceptable only in exceptionally unfavourable market conditions and where such breach is justified by the interests of investors (the CSSF mentioning as examples the 9.11 attacks and the Lehman Brother bankruptcy);
- bank deposits, money market instruments and money market funds should no longer be classified as ancillary liquid assets under Article 41(2) b) of the UCI Law when they meet the criteria of Article 41(1) of the UCI Law (i.e. in such case they qualify as “eligible investments” for UCITS), and other money market instruments may also constitute “eligible investments” for UCITS under the so-called “trash ratio” when they do not meet the criteria of Article 41(1) of the UCI Law;
- margin accounts do not qualify as ancillary liquid assets under Article 41(2) b) of the UCI Law nor as bank deposits under Article 41 (1) f) of the UCI Law.

The CSSF also takes the opportunity of these FAQs on UCI Law to recall that Luxembourg UCITS are only authorised to invest in eligible assets under Article 41(1) of the UCI Law (including bank deposits, money market instruments and/or other eligible assets) if this is clearly disclosed in their investment policy, and accompanied by a disclosure specifying whether these assets are/may be used to achieve investment goals, for treasury and cash management purposes, and/or in case of unfavourable market conditions. If a Luxembourg UCITS invests in a category of assets that is not foreseen in its investment policy, the provisions of CSSF Circular 02/77 concerning the protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules will apply.

Finally, as ancillary liquid assets are now limited to deposits at sight with banks, the CSSF clarifies in its FAQs on UCI Law that the 20% diversification limit on deposits with a same body (Article 43(1) of the UCI Law) applies to ancillary liquid assets but does not apply to margin accounts.

## 2. FAQs on MMF Regulation

As regards Luxembourg MMFs, the CSSF clarifies in its FAQs on MMF Regulation that:

- the 10% diversification limit on deposits with the same credit institution (Article 17(1)b) of MMF Regulation) also applies to ancillary liquid assets under Article 9(3) of MMF Regulation;
- the maximum holding of ancillary liquid assets by a MMF under Article 9(3) of MMF Regulation is also limited to 20% of its NAV.

## II. What Luxembourg funds need to do and by when?

Luxembourg UCITS are expected to comply with the new conditions and clarifications on ancillary liquid assets as described by the CSSF in its updated FAQs on UCI Law and MMF Regulation **as soon as possible and by 31 December 2022 at the latest** considering the best interests of investors.

In particular, UCITS will need to assess their investment policies and consider amending

the current disclosures made in their prospectuses as appropriate, namely to clearly describe the possibility (i) to invest in eligible assets under Article 41(1) of the UCI Law (such as bank deposits and money market instruments) and the purpose for which such investments are made (investment purposes, treasury purposes and/or unfavorable market conditions), and (ii) to hold ancillary liquid assets within the meaning and limits as accepted by the CSSF. UCITS' compliance monitoring systems should also be verified the case being in order to ensure that they will only hold such ancillary liquid assets as permitted by the CSSF.

In its Press Release 21/26, the CSSF does not specifically require AIFs, which qualify as MMFs under the MMF Regulation, to take any specific action with regards to the above updated FAQs. However, as Articles 9(3) and 17(1)b) of MMF Regulation apply to both UCITS and AIFs qualifying as MMFs, Luxembourg AIF-MMFs are also clearly subject to the interpretation and clarifications on ancillary liquid assets as described by the CSSF in its updated FAQs on MMF Regulation.

For any further information please contact us or visit our website at [www.elvingerhoss.lu](http://www.elvingerhoss.lu).

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.