

FAQ on CSSF Circular 24/856

On 24 December 2024, Luxembourg's financial regulator, the *Commission de Surveillance du Secteur Financier* ("CSSF"), issued an [FAQ](#) relating to [CSSF Circular 24/856](#) on the protection of investors in case of an NAV calculation error, an instance of non-compliance with the investment rules and other errors at UCI level ("Circular").

Background

The Circular sets out guidelines to be observed by undertakings for collective investment subject to CSSF supervision ("UCIs") and investment management professionals operating in Luxembourg in the event of errors in the management of UCIs.

These guidelines relate to errors in the calculation of the net asset value ("NAV") of a UCI, breaches of the investment rules applicable to UCIs as well as other errors at the level of a UCI as stipulated in the Circular.

For more information on the Circular please see our previous [Client Update](#).

CSSF FAQ

The FAQ includes questions and answers on:

- the scope of application of the Circular;
- NAV calculation errors at UCI level;
- non-compliance with the UCI investment rules;
- other errors at UCI level; and
- general guidelines for correcting errors/instances of non-compliance.

a) *Scope of application of the Circular*

The FAQ clarifies that reserved alternative investment funds are generally not in scope of

the Circular unless they fall into one of the categories of UCIs listed in Section 2.1 of the Circular (e.g., Luxembourg ELTIFs).

b) *NAV calculation errors at UCI level*

- *Significant NAV calculation errors without subscriptions and redemptions:* If a significant NAV calculation error occurs during a period in which no subscriptions and redemptions were recorded, no compensation amounts need to be paid to the UCI and/or its investors. However, corrective measures must be implemented to ensure that such errors do not reoccur in the future.
 - *Tolerance thresholds:* If the tolerance threshold for NAV calculation errors, as established by an internally approved policy, is set lower for the respective UCI than the threshold prescribed by the Circular, any NAV calculation errors must be notified to the CSSF based on such lower threshold.
 - *Closed-ended UCIs:* While tolerance thresholds do not apply to closed-ended UCIs, such UCIs or their investment fund managers ("IFM") must ensure that NAV calculation rules are complied with and that policies and procedures are in place to ensure correct NAV calculation and minimise the risk of NAV calculation errors.
- ### c) *Non-compliance with the UCI investment rules*
- *Active non-compliance with the 20% deposit limit.* Examples provided in the FAQ illustrate situations that should be treated as instances of active non-compliance by an undertaking for collective investment in transferable

securities (“UCITS”) of the 20% deposit limit of Article 43(1) of the [law of 17 December 2010 relating to undertakings for collective investments, as amended](#) (“2010 Law”).

Additionally, it reminds market participants of the difference between active breaches and passive breaches.

- *US T+1 settlement.* This FAQ outlines the elements that UCITS must consider from an investment compliance perspective when entering into transferable securities transactions in the United States (as well as Canada and Mexico) due to the move to a T+1 settlement cycle in these countries. In this context, UCITS are required to take appropriate measures to ensure ongoing compliance with their investment rules and implement pre-trade compliance checks that take into account the new settlement cycles in order to avoid non-compliance with the applicable investment rules (ultimately those of the 2010 Law).
- *Cumulative investment rule (“5/40% rule”):* In case of active non-compliance with the 5/40% rule, a UCITS must determine which securities to sell to remediate its non-compliance with the cumulative investment rule of Article 43 (2) of the 2010 Law (which provides that the total value of the transferable securities and money market instruments held by a UCITS in issuing bodies in each of which it invests more than 5% of its assets shall not exceed 40% of the value of its assets) and the appropriate method for calculating the related financial impact.
- *Negative interest on excess deposits:* UCITS may not calculate the financial impact of active non-compliance with the 20% deposit limit of Article 43(1) of the 2010 Law by using a method which compares the interest rate return borne by the UCITS to the interest rate return of an equivalent deposit made with another credit institution where the deposit returns a negative interest to the UCITS.
- *Compensation calculation:* With respect to the same UCI, the accounting method may be used to calculate the compensation amount for certain instances of active investment non-compliance, while the economic method may be used to calculate the compensation amount for other types of active investment non-compliance provided that the use of each respective method is stipulated in the internal policy of the IFM.
- *Leverage limits:* No notification to the CSSF is required where UCITS or AIFs exceed the level of leverage / leverage limits disclosed to investors. However, UCITS and AIFs must monitor and correct the non-compliance in accordance with their internal procedures.

d) *Other errors at UCI level*

Examples provided in the FAQ clarify situations that qualify and do not qualify as “non-compliant payment of costs/fees error” at UCI level in accordance with Section 6.2. of the Circular. The latter includes instances such as timely accrued audit fees based on reliable information and good faith and incorrect fee accruals that do not result in significant NAV calculation errors.

e) *General guidelines for correcting errors/instances of non-compliance*

Prior approval from the CSSF is not required when using the “*de minimis*” amount for compensating investors who are financially impacted by a significant NAV calculation error or other error. However, the CSSF may ask for justification of the “*de minimis*” amount applied as well as documentary evidence that this amount constitutes the bank fees required to transfer the compensation amounts to investors. The internal policy of the IFM should provide for the use and level of the “*de minimis*” amount.

Notification of Errors and Instances of non-compliance

On 17 December 2024, the CSSF issued a [press release](#) announcing the replacement of the notification forms previously used under [CSSF Circular 02/77](#), which has been repealed by the Circular. These updated forms have been available since 1 January 2025 on the [eDesk PRODUCTION platform](#), specifically in the section titled "*UCI notification in accordance with Circular CSSF 24/856*".

Additionally, on 31 December 2024, the CSSF issued a [press release](#) detailing the procedure for notifying errors and instances of non-compliance under the Circular. The CSSF clarified that, from 1 January 2025, any detected errors or instances of non-compliances must be reported either through the eDesk platform or via an automated submission using the API (S3 protocol). Further details on this process are provided in the [practical and technical guidance](#) published on the same day.

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

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March 2025

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