06/05/2024

CSSF UPDATE!

NEW CIRCULAR ON -NAV ERROR-

CSSF CIRCULAR 24/856

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replacing circular 02/77 from 1 January 2025

- Responsibility of UCI's governing to prevent errors/non-compliance
- Implementation of New Errors
- Obligation of the responsible person of the error to compensate the fund

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Scope

Are directly concerned with the circular almost all undertakings for collective investment including UCITS; Part II ; SIF ; SICAR. As well as MMF, ELTIF, EuVECA, and EuSEF under the RAIF regime.

General principle

- It is the responsibility of the UCI's governing body to prevent, as much as possible, the occurrence of errors/non-compliance.
- The UCI's governing body must ensure the establishment of a good organisation at the level of the management company/AIFM and its delegates.

↑ Please review this at the next board meeting ↑

- The UCI's governing body must ensure that agreements with their service providers comply with the mechanism of this circular.

↑ Please Review your delegation agreements ↑

- When the UCI has appointed a management company/AIFM, it is the responsibility of the management company/AIFM (under the supervision of UCI's governing body), to ensure that the error/non-compliance is corrected and that any potential harm suffered by the UCI and/or its investors is remedied.

NAV error & tolerance level

- If NAV errors/other errors occur nevertheless, UCI's governing body must ensure compliance with this circular.
- The tolerance level remains mostly unchanged.

Different types of funds	Tolerance threshold (as a % of NAV)
UCITS governed by the MMF Regulation	0,20% *(formerly 0.25%)
UCITS investing primarily in bonds and/or other debt securities (bond UCITS)	0,50%
UCITS pursuing a mixed investment policy (mixed UCITS)	0,50%
UCITS investing primarily in equities and/or other securities equivalent to equities (equity UCITS)	1,00%

UCITS investing primarily in other eligible assets (*) for a UCITS	1,00%

- For Part II and ELTIF (reserved to professional investors), as well as SIF, SICAR, EuVECA, and EuSEF (except MMF):
  - The tolerance threshold for these UCIs must be determined by the UCI directors in collaboration with the IFMs. It must take into consideration the characteristics of the UCI, its investment policy, its risk profile the valuation policy.
  - The tolerance threshold must not exceed 5% of the NAV. By default, the tolerance threshold cannot be 5% of the NAV.
- Compensation plan
  a) Discovery

Upon discovering a significant NAV calculation error, prompt notification to relevant parties (Investment fund managers, UCI administration, Depositary bank) should be sent.

b) Correction and reparation process

Identifying the error's origin and correcting it to ensure future NAVs are accurate
Determining corrected NAVs during the error period
Adjusting subscriptions and redemptions made based on incorrect NAVs, calculating reimbursements for the UCI and/or affected investors
Promptly updating the UCI accounts to cover receivables and/or payments resulting from the error
Informing and compensating affected investors according to the compensation plan.
Implementing a remediation plan, including adjusting or strengthening internal controls to prevent future errors

Compensation

- Whoever commits an error/non-compliance which results by the failure to follow any obligations is responsible to repair the damage.
- The expenses incurred by the corrective operations for an error/non-compliance cannot be borne by the UCI and therefore should not be deducted from its assets.

Other errors

1. Incorrect application of the swing pricing serving as protection for the UCI in capital transactions

The Undertakings for Collective Investment (UCIs) must receive indemnification in the event of any loss incurred. If investors suffer losses, they are also entitled to indemnification, following the procedure outlined for significant Net Asset Value (NAV) errors. Similar anti-dilution mechanisms, such as anti-dilution levy and liquidity fees, are subject to the same rules and procedures.

2. Fees not paid in accordance with the UCI’s sales documents (e.g. the Prospectus)

In cases of errors related to fees and costs, if the Undertakings for Collective Investment (UCIs) have paid more than the specified amount outlined in their prospectus or constitutive document, they are entitled to indemnification without any materiality threshold being applied. Should the indemnity payment lead to a significant error in the Net Asset Value (NAV), it must be rectified promptly.

3. Incorrect application of cut-offs

These errors involve processing subscription or redemption orders using an incorrect Net Asset Value (NAV). Both the Undertakings for Collective Investment (UCI) and its investors are entitled to indemnification for any resulting losses. However, investors who have gained from the error cannot be compelled to reimburse the UCI unless they are classified as well-informed or professional investors. Indemnification actions may trigger the implementation of procedures in the event of significant NAV errors.

4. Incorrect accounting allocation of operations linked to investments

Undertakings for Collective Investment (UCIs) are entitled to indemnification for losses arising from errors in allocating investments to the incorrect unit/share class, sub-fund, or fund. However, any profits derived from such errors must remain with the UCI. In instances of significant Net Asset Value (NAV) errors, the prescribed procedure for remedying such errors must be adhered to.

No tolerance level applies in those cases.

Notification

- Any error/non-compliance should be notified to the CSSF as soon as possible.
  - Notification to the CSSF must be done with the form provided on its website.
  - Any error/non-compliance that does not result in compensation to investors should be notified to the CSSF within 8 weeks maximum after the date of detection of the error/non-compliance.
- Authorities in the countries where an UCI's units are distributed must be informed in case of errors/non-compliance according to the rules in place in those countries.

Entry into force

- The circular will entry into force on **1 January 2025**.
- **Errors occurring before 1 January 2025 must be dealt with in accordance with Circular 02/77**.

Marjac would be pleased to assist for any help needed to understand and to interpret the complexities of the Circular.

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