EGP | 2nd Floor | 5 Rue Gabriel Lippmann | L-5365 Munsbach | Luxembourg

UCITS Long Form Report (LFR) Reform Implementation outlook for 2023.

What do UCITS boards need to understand and do about this reform as it bears significant consequences and the responsibility to deliver on time and comprehensively?

Background:
In December 2021, the Luxembourg regulator, the CSSF, has introduced a set of 3 circulars impacting both Investment Fund Managers (IFM) and Investment Funds (IF) to reform the former LFR. They are CSSF Circulars 21/788, 789 and 790. The goal is to standardise and automate this reporting process via the CSSF e-Desk to enable a more effective and efficient risk-based approach monitoring of the industry. The increased regulatory complexity required such an overhaul. Some funds closing their accounts on and after June 30th, 2022, have already been impacted but for many the year 2023 is the go live moment.

Content:
As far as IF are concerned, 3 documents need now to be produced:

1- A Self-Assessment Questionnaire (SAQ), produced primarily by the IFM with inputs from the IF,
2- A Separate Report (SR) produced by the IF external auditors (REA – Réviseur d'Entreprise Autorisé) reflecting their tests results,
3- A Management Letter produced by the external auditors as was previously the case.

The "philosophy" underpinning the SAQ is to have a factual picture as comprehensive as possible about the fund and its eco-system, thus ensuring compliance with the regulatory context in Luxembourg. It is worth underlining that at the receiving end, the CSSF will be looking at these documents and confronting them with what it gathers from its other interactions with the IF. So, consistency over time with other fund's reports sent to the CSSF is key.
The SAQ (54 pages long and several hundreds of questions rich) has a predefined template with a large set of questions to be addressed mostly in a yes/no format falling into 7 categories. This template was modified in October 2022 and the new version is to be used as of January 2023. A FAQ was expected in early 2023 to further assist the industry in producing this new report, not available at time of writing this note.
The SAQ should be presented to the IF board for review/validation ahead of transmission as the former LFR was.
Undoubtedly the SAQ will require more work from all involved initially to produce the first edition for each IF as is generally the case with amended processes. Therefore, it cannot be considered as cost neutral for the IF/IFM and investors. Indeed, auditors are submitting not insignificant invoices for the additional work that they say is necessary to complete the SR and review the SAQ. All stakeholders have more work to put into these reports, and hopefully, this new process will become a well-oiled efficient and effective exercise in the near future.

Timing for implementation:
In 2022, IFM's had to comply with this new framework, while for IF only those closing on June 30th and thereafter were in scope for 2022. Hence, IFM have already gained first experience on this new reporting topic.
The SAQ is due within 4 months after the IF year-end and the SR within 6 months.
It is recommended to anticipate preparing the SAQ well ahead of the IF year-end. All the non-descriptive sections can be addressed without delay for the accounts closing. Early Involvement of the IFM and the REA is key for a smooth process.
It is expected that, notwithstanding the fact that these are new reports, the CSSF will strictly implement the reporting deadlines for both SAQ and SR considering that ample time has been made available to the industry to prepare.

Transmission to the CSSF:
All these documents have to be transmitted to the CSSF via the e-Desk. A new version of the e-Desk has been released by the CSSF in January 2023 as the platform underwent improvements based on first feedbacks from users.
Inputting the answers on the SAQ template must be planned with enough time and applying a 4 eyes' principle for control purposes. Who is authorised to access e-Desk on behalf of the IF has to be organised with adequate backup.
Ideally a copy of the inputs should be downloaded as audit trail. However, it is not clear at the time of writing from interacting with market participants if this is possible easily or not with e-Desk. The CSSF is currently looking into that question. Once the input/upload has been "validated" on e-Desk there is no way to go back at all, so pushing the "validation" button should be done cautiously after all checks and controls have been completed.
The fund's external auditors (REA) must be properly indicated by the IF/IFM on the e-Desk section related to the IF. Otherwise, the auditors will not be able to access the e-Desk to upload the other required documents (SR and Management letter).

Whoever does the input/upload on the e-Desk must have a valid Luxtrust certificate, failing to do so will not be an acceptable excuse for eventual late submission.

Conclusion:
Clearly another regulatory change which is manageable with a certain anticipation and preparation between the IF, the IFM and the REA.
It can offer an opportunity to run a useful gap analysis between the IF's current practises and what is expected by the regulators. Such a periodic assessment could benefit all stakeholders to help always maintain best practices.
As far as IF boards are concerned, they should be involved proactively to get sufficient assurance that all is done and delivered on time since, in the end, they are responsible for compliance with this regulatory obligation.
As stated by the CSSF, "anticipate, prepare and document" should be the motto for success in this exercise.

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