GLOBAL FUND SERVICES

Background and scope

Luxembourg CSSF circular 24/856 on the protection of investors in case of a NAV calculation error, an instance of non-compliance with the investment rules and other errors at UCI level came into effect on **January 1st, 2025,** replacing circular 02/77.

Like its predecessor, the circular stipulates requirements in relation to NAV calculation errors and non-compliance with investment rules but also introduces four new types of errors including:

(i) incorrect application of swing pricing,
(ii) incorrect application of cut-off periods,
(iii) non-compliance with costs and charges and
(iv) investment allocation errors.

Transfer Agency errors in relation to non-compliance with cut-off rules even where there is no NAV calculation error are therefore included within the scope or the circular.

Impact to Transfer Agents

Inclusion of Other Errors / TA error of incorrect dealing date

Section 6.3 of the circular brings the incorrect application of cut-off rules into the definition of 'other errors' and therefore brings requirements of the circular including potential reporting to, and review by, the CSSF as well as compensation to underlying investors via intermediaries into scope for TA errors where the incorrect dealing date has been applied, where there has been no NAV calculation error.

Party that caused and error must ensure compensation for it

Article 15 outlines that in respect of the roles and obligations of the different stakeholders, the circular is based on the guideline under which the party that caused an error/non-compliance entailing a loss, as a result of non-compliance with the obligations applicable to them, must ensure compensation for it.

This, in conjunction with Article 121 below impacts both in respect of TA errors where a deal is placed at the incorrect dealing date ('non-compliance with cut-off rules') and wider impact in terms of NAV calculation errors and the scope for compensation.

Transactions via intermediaries

Article 121 requires that the UCI must ensure that the final beneficiaries having subscribed/redeemed through financial intermediaries receive the compensation which is due to them following the error/non-compliance. This is included under general guidelines and therefore applicable to all error types covered in the circular, including NAV calculation errors and TA errors.

It is important to note that the detail of such transactions and the scale of relates gains or losses cannot be quantified by the Transfer Agent even at the point of error identification but would be reliant on information from the relevant intermediary(ies) via the fund in order to assess.

Netting of transactions and reimbursement of gains

Article 45 stipulates that in relation to NAV calculation errors the final compensation amount for an investor may be determined on a net basis, provided that the UCI is able to ensure that the investor having made these transactions is the same final beneficiary.

Article 108 requires, in relation to incorrect application of cut-off errors, and art. 44 in relation to NAV errors that where investors realised a gain due to the error, they will retain the gain and the UCI must be compensated by the difference between the erroneous NAV and the corrected NAV. Only where the investor qualifies as well-informed/professional investor, the UCI may request such an investor to reimburse the amounts unduly perceived.

Where an investor suffered a loss, it must be compensated by the UCI based on the allocation of additional units or based on the payment of the difference between the erroneous NAV and the corrected NAV.

Impact to Procedures

The circular requires the UCI administrator to establish, implement and maintain procedures in respect of aspects of NAV error and other error correction:

- **Detect, assess, and notify errors to the UCI**:
  - detect may be through existing or additional MI, KPI & KRIs
  - assess through a robust error review and correction process, and
  - Notify the fund and/or CSSF as appropriate

- **Procedures and controls in relation to delegates** to prevent errors and ensure remediation where necessary:
  - May be confirmed via Service Level Agreements

- **Implement a remedial action plan**. Transfer Agents would have a role in:
  - Implementing the remedial action plan agreed upon by the UCI
  - Informing the investors that must be compensated
  - Proceeding with the compensation of the UCI and/or investors
  - Compensation to investors can be made through allocation of additional units
  - Only well-informed / professional investors can be asked for the reimbursement of a gain
  - Where an investor has made subscriptions as well as redemptions in the period, netting is only permitted where the final beneficiary of the transactions is the same.
  - UCI may apply a de minimis to compensation paid out, but not where additional units are allocated

- **Investor transaction placed at incorrect NAV** must be investigated to confirm no related NAV error or no market timing / late trading concern.

CSSF / REA Review / Additional Controls

The CSSF requests the REA (réviseur d'entreprises agréé -approved statutory auditor) to carry out additional controls where:

  - the error/non-compliance relates to a UCITS or a UCI Part II; and
  - the total compensation amount exceeds EUR 50,000 or the compensation to be paid out to one single investor exceeds EUR 5,000.