THE NEW NAV ERRORS AND INVESTMENT BREACHES CIRCULAR

Regulatory Alert

September 2024

Dear Ladies and Gentlemen,

CSSF Circular 24/856 on NAV calculation errors (hereinafter the "**Circular**") was published by the CSSF on 28 March 2024 and will enter into force as of 1 January 2025.

The Circular contains guidelines to be followed concerning NAV calculation errors, breaches of investment rules, other errors, and the notification thereof.

Kind regards,

Carl Hasse
Compliance
Co-Team Leader

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EXECUTIVE SUMMARY

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 sets the guidelines to be followed by collective management professionals that operate in Luxembourg in case of errors in the administration or management of undertakings for collective investment subject to the CSSF's supervision (the "funds").

More specifically, these guidelines cover errors in the calculation of the net asset value ("NAV") of a fund, instances of non-compliance with the investment rules applicable to funds as well as other errors at fund level, as specified in the new Circular.

The new Circular repeals CSSF Circular 02/77 on the protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment.

As of 1 January 2025, the requirements of the new Circular will become effective.

Up until 1 January 2025**,** the current requirements of CSSF Circular 02/77 must continue to be applied.

Funds/IFMs may wish to consider/note:

- **Fund boards and IFM boards, as applicable, must take an active role in handling significant NAV errors, active investment breaches, and other breaches, as well as the notification process**
- **Establish a sound organisation to prevent, to the extent possible, the occurrence of errors/instances of non-compliance**
- **Ensure that the relationships with your delegates and service providers involved in the functioning of the funds are covered by adequate arrangements (including contractual arrangements) in accordance with the guidelines of the new Circular**
- **The party causing an error/non-compliance entailing a loss must compensated the negatively affected party**
- **Ensure the next update of the prospectus complies with this Circular (*inter alia* tolerance thresholds, *de minimis* rule, etc)**
- **Ensure that your funds have their own policy/procedures in place as required by the Circular**
- **Intermediaries: know who your underlying investor are**
- **Continue to apply the requirements of CSSF Circular 02/77 until the end of 2024**

SCOPE

The Circular applies to:

- **UCITS**
- **Part II UCIs**
- **SIFs**
- **SICARs**
- **RAIFs**
- **MMFs**
- **ELTIFs**
- **EuVECAs**
- **EuSEFs**

For certain UCI types, the requirements concerning the external auditor do not apply.

DATE OF APPLICATION

The Circular enters into force as of **1 January 2025**.

It is foreseen that the FAQ on CSSF Circular 02/77 will be replaced with an FAQ on CSSF Circular 24/856.

THE STAKEHOLDERS AND THEIR ROLES

The fund board, or the IFM board (under the supervision of the fund board, where applicable), is responsible for implementing sound organisation to prevent the occurrence of errors/instances of non-compliance at fund level. In the event of an error/instance of non-compliance, the aforementioned boards, as applicable, must ensure compliance with the Circular's guidelines.

The organisational arrangements in place at the fund and at the IFM, where applicable, must include the modalities for the notification of errors/instances of non-compliance to the CSSF.

The fund board

The fund board is responsible of the fund's overall policy, also when delegating activities, and shall act in the investor's best interest.

The fund board must supervise the IFM, meaning that it can impose certain rules of conduct on the IFM, also where the IFM delegates certain functions.

In the case of an FCP, the fund board (i.e. the IFM board) is responsible for implementing sound administrative and accounting organisation, and adequate internal control mechanisms to prevent the occurrence of errors/instances of non-compliance and to ensure compliance with the Circular's guidelines on the handling of these errors/instances of non-compliance.

The IFM

1. **Luxembourg IFM**

As a reminder, a Luxembourg IFM of a Luxembourg fund is responsible for implementing sound administrative and accounting organisation, control and safeguard arrangements for electronic data processing, and adequate internal control mechanisms. These arrangements also need to cover any delegations made by the IFM.

IFMs and AIFMs are reminded that, as part of collective portfolio management, valuation and pricing falls under their responsibility, also in the case where this activity is delegated. They must therefore ensure that these delegations and sub-delegations will not prevent execution of its own obligations.

2. **Non-Luxembourg IFM managing a Luxembourg fund**

IFMs managing Luxembourg funds on a cross-border basis must comply with the Circular on the handling of errors/instances of non-compliance.

3. **Registered AIFM of Luxembourg EuVECA/EuSEF**

- Are liable for any losses or damages resulting from infringements of the EuVECA Regulation or the EuSEF Regulation
- Must comply with the Circular on the handling of errors/instances of non-compliance and within the limits of the applicable European rules

The fund administrator

- Errors/instances of non-compliance must be recorded, monitored and, where appropriate, corrected by the fund administrator upon approval by the fund or its IFM, where applicable
- In cooperation with the other stakeholders, must draw up a remediation plan to be approved by the fund or its IFM, where applicable, and implement corrective measures as well as ensure proper follow-up is performed
- Remains responsible for any delegation it performs and must ensure its delegation complies with the Circular to prevent errors/instances of non-compliance

The depositary

- Must implement adequate procedures to ensure compliance with its oversight and control functions, taking account of the outcome of its assessment of the risks associated with the nature, scale and complexity of the UCI's investment strategy and of the IFM's organisation
- Must be informed of occurrence of errors/non-compliance
- Must inform the fund board or the IFM board when it notices an error/instance of non-compliance
- Must notify the CSSF when it notices that the fund Board, or the IFM board, is not acting upon such errors/non-compliance

NAV CALCULATION ERRORS AT FUND LEVEL

A NAV calculation occurs because of one or more factors or circumstances causes the NAV calculation to produce an incorrect result.

These factors or circumstances may be due to human error, inadequate controls, shortcomings in the administrative processing of operations, imperfections or deficiencies in the IT, accounting or communication systems, or due to non-compliance with the valuation rules (e.g. law, constitutive documents and/or prospectus).
These factors or circumstances can occur at the level of the entity calculating the NAV (typically the central administrator) but also at other levels of the fund organisation (e.g. fund board, IFM, external valuer, etc.).

Upon discovery of an NAV calculation error, the fund or the IFM, where applicable, must take the necessary measures to correct the situation in which the fund finds itself as a result of this error, to correct any loss suffered by the UCI and/or investors and to make the necessary compensation.

The Circular does not apply to **closed-end funds** for NAV calculation errors as per Chapter 4 and 9 of the Circular. Notifying the CSSF about those errors is not required. Nevertheless, NAV calculation errors must be corrected, and the external auditor must verify the correction thereof during.

Tolerance thresholds

Significant NAV errors (also known as material NAV errors) are NAV calculation errors whose proportion compared to the NAV reaches or exceeds a certain tolerance threshold. Significant NAV errors must be notified to the CSSF and corrected in accordance with the provisions the Circular.

For insignificant NAV errors, it is sufficient to correct the source of the error that occurred and to take all necessary measures to prevent such an error from reoccurring in the future.

The following table compares the current and future tolerance thresholds to be applied as of **1 January 2025**:

TOLERANCE THRESHOLDS	CSSF Circular 02/77	CSSF Circular 24/856
MMFs governed by the MMFR[1]	0.25 %	**0.20 %**
Funds investing primarily in bonds and/or other debt securities	0.50 %	0.50 %
Funds following a mixed investment policy	0.50 %	0.50 %
Funds investing primarily in shares and/or other securities equivalent to shares	1.00 %	1.00 %
Funds investing primarily in other assets	n/a	**1.00 %**

Part II UCIs and ELTIFs, whose units can be held by investors that are not well-informed or professional investors, may apply higher tolerance thresholds when primarily investing in other assets. In this case, a specific well-documented analysis must be produced to increase the tolerance threshold which will be set by the fund board, together with the IFM, where

[1] Money Market Fund Regulation of June 2017

applicable. However, certain conditions set out in the Circular must be met and investors shall be informed of the tolerance thresholds to be applied.

UCIs Part II and ELTIFs reserved to well-informed or professional investors, as well as SIFs, SICARs, EuVECAs and EuSEFs, may apply higher tolerance thresholds.

1) When setting the tolerance thresholds, the following aspects must at least be considered:

- The fund's characteristics (including its "open/closed-ended" type) and its frequency of opening to subscriptions and redemptions of units
- The investment policy pursued by the fund in accordance with the constitutive documents and/or prospectus
- The nature of the investments (e.g. listed assets, unlisted assets)
- The fund's risk profile with its exposure to risks such as liquidity risk, market risk or credit risk as well as the fund's volatility level
- The valuation policy in place for the fund according to the characteristics of the fund, its investment policy and the planned investments

2) The tolerance thresholds set in the table before must be duly considered as a reference by UCIs Part II and ELTIFs reserved to well-informed or professional investors as well as SIFs, SICARs, EuVECAs and EuSEFs. The CSSF expects, for instance, UCIs Part II and ELTIFs reserved to well-informed/professional investors or SIFs pursuing principal investment policies similar to those presented in the table before, to use tolerance thresholds similar to those provided that table.

3) The tolerance threshold must not exceed 5% of the NAV. In no case are UCIs permitted to use the 5%-threshold by default, knowing that the tolerance threshold must, in accordance with the above-mentioned conditions, be established subject to a specific analysis taking account the aspects indicated above. The fund must be able to provide to the CSSF the specific analysis mentioned above. The CSSF has the possibility to request this analysis as well as further clarification.

In any case, should a higher tolerance threshold be applied, this information must be transmitted to investors via the official and usual investor communication channels provided for in the constitutive documents and/or the prospectus.

Funds may apply lower tolerance thresholds. However, the fund must ensure that any lower tolerance thresholds will be consistently applied over time.

Determination and application of the tolerance threshold

The following guidelines must be observed when determining and applying the tolerance threshold:

i) For an umbrella fund, the tolerance threshold must be determined on an individual basis at the level of each sub-fund. Where there are several classes or categories of units within one sub-fund, a single tolerance threshold must be applied to all classes or categories.

ii) Upon the incorporation of a fund or the launch of a new sub-fund and in any case before the publication of the first NAV, the tolerance threshold applicable to the fund (in the case of a single sub-fund fund) or to the sub-fund (in the case of an umbrella fund) must be determined, on a documented basis, in accordance with the policy and procedures in place for the fund.

iii) The investment objective and policy, as laid down in the constitutive documents and/or the prospectus, must be used as a reference for determining the tolerance threshold.

iv) For a fund of fund, an index-tracking fund or a feeder fund, the applicable tolerance threshold must be determined by reference to the target funds' principal investment policy of the target funds, or by reference, respectively, to the principal composition of the index, as established at the level of the fund of funds, the index-tracking fund or feeder fund. The same applies to funds which implement their investment policy mainly through transactions on financial derivative instruments.

v) A fund whose units are admitted to marketing abroad must apply, by default, the tolerance threshold determined in accordance with this Circular. However, this rule does not apply where a country in which fund units are admitted to marketing requires the application of a more restrictive tolerance threshold. In this case, the fund must retain this more restrictive tolerance threshold. For the sake of equal treatment of investors, this more restrictive tolerance threshold must apply to the fund (or sub-fund) as a whole and to all investors of this fund (or sub-fund) which, regardless of their country of origin, are treated equally in case of NAV calculation errors.

Correcting and remediating of significant NAV errors

Upon discovery of a **signification NAV error**, the following stakeholders must be informed without delay (in no particular order):

- The fund board
- The IFM board (where applicable)
- The depositary
- The central administrator

In case of a significant NAV error, a **remedial action plan** which notably includes the following steps must be drawn up:

- Precisely identify the origin of the error and immediately correct the source of the error to ensure that the next NAVs are correctly calculated
- Determine which NAVs are to be corrected during the error period
- Apply the corrected NAV to the **subscriptions and redemptions** that were made with an erroneous NAV to compute the amounts to compensate to the fund and/or the investors who suffer loss due to the significant NAV error
- Afterwards, without delay, in the accounting records of the fund, reflect the payments to be received and/or the payments to be made by the fund
- Inform the investors who will be compensated due to the significant NAV error, and inform them of the foreseen modalities to compensate their loss
- Compensate the fund and/or investors
- Draw up and implement a remedial action plan (where appropriate, adjusting or strengthening the internal controls for the fund) to avoid future errors

Compensating any loss is only compulsory for the dates on which the NAV calculation error was significant. For the other dates, the fund or the IFM, where applicable, is responsible for assessing whether it is necessary to calculate the financial impact of the error and establish a compensation plan.

Calculating the financial impact of the significant NAV calculation errors

The correction of the erroneous NAVs during the error period must be carried out, without delay, and the loss for the fund and/or investors must be calculated based on the corrected NAVs.

Measures to take in case of significant NAV errors which were either over- or undervalued:

Investors	Funds
Undervalued NAV	
Investors that have redeemed their units during the error period based on an erroneous NAV must be compensated for the difference between the corrected NAV and the undervalued NAV which has been applied to the redeemed units.	The fund must be compensated for the difference between the corrected NAV and the undervalued NAV which has been applied to the units subscribed to during the error period.
Overvalued NAV	
Investors that have subscribed to the fund during the error period based on an erroneous NAV must be compensated for the difference between the overvalued NAV applied to the units subscribed to and the corrected NAV.	The fund must be compensated for the difference between the overvalued NAV which was applied to the units redeemed during the error period and the corrected NAV.

If a well-informed/professional investor (regarding subscriptions or redemptions) involuntarily benefited from a significant NAV error, the fund may request this investor to reimburse the incorrectly received funds. For investors that are not well-informed/professional investors, it is not appropriate to make a request for reimbursement from the latter.

The financial impact can be calculated using either the **compound method** or the **non-compound method**. The **compound method** is a method where each NAV calculated during the error period is corrected by:

i) the direct effect of the significant NAV calculation error; and
ii) by the indirect effect related to the cumulative subscriptions/redemptions made at an erroneous NAV during the period of significant NAV calculation error.

The **non-compound method** does not consider the cumulative effects of points (i) and (ii) above for each NAV calculated during the period when the significant NAV error occurred.

The calculation method(s) to be used must be defined in the policy and procedures of the fund, and shall be applied consistently.

NON-COMPLIANCE WITH THE FUND INVESTMENT RULES

Active and passive non-compliance with investment rules

Upon discovery of an instance of non-compliance with the investment rules (hereinafter "**investment breach**"), the fund or the IFM, where applicable, must determine whether an investment breach is active or passive.

Passive investment breaches occur for reasons beyond the control of the fund or as a result of the exercise of subscription rights, and need not be notified to the CSSF. Active investment breaches are those that cannot be deemed as being beyond the control of the fund (i.e. a voluntary decision or absence of decision to act or not act) and must be notified to the CSSF.

The funds shall have pre-trade and post-trade controls, as well as their frequency, defined in the funds policies and procedures. Pre-trade controls shall verify, at the moment of the portfolio management decisions that the envisaged investment complies with the fund's investment rules. Post-trade controls, performed at least when calculating the next NAV, must be able to classify an investment breach as either active or passive, in order to trigger the appropriate course of action.

Upon discovery of an **active investment breach**, the following stakeholders must be informed without delay (in no particular order):

- The fund board
- The IFM board (where applicable)
- The depositary
- The central administrator

For UCITS and funds investing in liquid assets, the corrective measures must be implemented immediately after detection of the active investment breach. For funds (excl. UCITS) investing on less liquid or illiquid assets, the corrective measures also be implemented without delay after detection of the active investment breach, although it is understood that this may take longer to implement.

Following an active investment breach, the following corrective measures could be taken:

1) Selling the non-eligible investments or the investments that do not comply with the investment policy of the fund
2) Selling the investment positions that exceed the breached investment restrictions
3) Adjusting the investment portfolio of the fund/sub-fund which does not comply with the minimum investment rules
4) Decreasing the levels of borrowings entered into by the fund that exceed the maximum level
5) Provisioning the eligible financial collateral by the counterparty in relation to securities financing transactions (e.g. securities lending transaction), or complying with the required diversification levels
6) It is also possible that a corrective action is not necessary notably following the development of financial markets or a capital activity at the level of the UCI

The following situations may arise in terms of impact calculation:

- From 1 to 4, the impact resulting from the investment breach must be determined in order to establish whether or not the fund suffered a loss in order to remediate any loss suffered by the fund
- Under 5, there is no need to perform an impact calculation as long as the counterparty of the securities financing transaction has not defaulted during the period of the breach
- Under 6, the fund must calculate the impact in terms of unrealised result originating from the breach, based on the investment's prices during the breach period

If breach caused a loss for the fund, then the latter must be compensated for the amount of the loss.

Correction methods for investment breaches

The fund shall have a policy and procedures in place to cover the requirements and guidelines of the Circular in place at the incorporation/launch of a fund. It must also clearly define the impact determination methods to be applied in case of an active investment breach.

In the case of an umbrella fund, the impact determination methods can be defined for the fund as a whole while also covering the different sub-funds or for every sub-fund individually.

Changing the impact determination method in the policy (e.g. from the accounting method to the economic method) is only possible if the change is duly justified with respect to the interest of the investors. This change must be approved by the fund board or the IFM board, where applicable. However, changing methods for handling an already identified investment breach is not permitted.

If the impact calculation results in a profit for the fund, this profit must remain within the fund.

The start and end dates of an active investment breach:
- Concerning portfolio transactions (excluding cash/deposits): trade date and trade date of regularising transaction/trade of date of return to compliance without intervention
- Concerning cash/deposits: value date of the inflows/outflows in the fund accounts

The Circular provides further details on the methods to calculate the financial impact:
  - The accounting method consists in calculating the gain or loss realised in the accounting of the fund and is the default method to be used
  - The economic method consists of comparing the financial impact (using the accounting method) and comparing it with the performance that would have been realised in case the non-compliant investments would have had the same fluctuations as compliant investments

Investment breach resulting in a significant NAV error

The fund or the IFM, where applicable, must verify, for every active investment breach, the impact of the non-compliant transactions with investment rules on all the NAVs during the period of breach. If the impact was significant with regards to the tolerance threshold applicable to a given NAV, then a significant NAV error has occurred.

Where investment breach causes a significant NAV error, the fund or the IFM, where applicable, must follow the Circular’s procedures to recalculate and correct the NAV for all the days the tolerance threshold of the NAV calculation was exceeded.

OTHER ERRORS AT FUND LEVEL

Other errors are defined in the Circular as:
- Incorrect application of swing pricing
- Non-compliant payment of costs/fees at fund level
- Incorrect application of cut-off rules
- Investment allocation errors

Incorrect application of swing pricing

Non-application of the swing factor as set for the fund:

Impact on the funds	The fund was not protected from the dilution effect and suffered a loss equal to the net variation in capital multiplied by the difference between the applied NAV and the NAV that should have been applied had it been adjusted by the swing factor set for the fund.
Corrective measures	The fund must be compensated for the loss suffered.
Impact on the investors	Depending on the direction of the swing that has not been applied, part of the investors benefited thereof (i.e. either those that subscribed or those that redeemed) and another part suffered a loss. • Where the tolerance threshold was not exceeded: no compensation is required for capital activity carried out by investors • Where the tolerance threshold was exceeded: a correction procedure according to Chapter 4 of the Circular must be applied

Swing pricing applied was exceeds the factor set for the fund:

Impact on the funds	The fund has been over-protected (received too much) from the dilution effect (in both the net subscription and the net redemption scenario).
Corrective measures	The fund has not suffered any loss and thus no compensation is required.
Impact on the investors	Depending on the direction of the swing applied, part of the investors benefited thereof (i.e. either those that subscribed or those that redeemed) and another part suffered a loss. • Where the tolerance threshold was not exceeded: no compensation is required for capital activity carried out by investors. • Where the tolerance threshold was exceeded: a correction procedure, pursuant to Chapter 4, of the Circular must be applied.

Swing pricing applied was insufficient compared to the factor set for the fund:

Impact on the funds	The fund was not sufficiently protected from the dilution effect and suffered a loss equal to the net variation in capital multiplied by the difference between the applied NAV and the NAV that should have been applied if it had been adjusted by the proper swing factor.
Corrective measures	The fund must be compensated for the loss suffered.
Impact on the investors	Depending on the direction of the swing applied, part of the investors benefited thereof (i.e. either those that subscribed or those that redeemed) and part of the investors suffered a loss. • Where the tolerance threshold was not exceeded: no compensation is required for capital activities carried out by investors • Where the tolerance threshold was exceeded: a correction procedure, according to Chapter 4, of the Circular must be applied

Non-compliant payment of costs/fees at fund level

The fund paid too much in costs/fees:

- The error must be corrected, and the fund must be compensated for the unduly paid amount
- If the compensation causes a significant NAV error, this error must be corrected by following the guidelines applicable to significant NAV errors

The fund paid too little in costs/fees:

- The fund or the IFM, where applicable, must ensure that the potential corrective actions of this error do not cause a loss to those investors that were not concerned by these costs/fees
- Corrective measures must not cause a loss to the investor through an ex-post charging of costs/fees. The fund has two options:
    - will not retroactively charge the amounts of costs/fees and the party that caused the error must remediate the error and cover the costs/fees owed by the fund
    - will retroactively withdraw the amounts from the fund's assets, by correcting the erroneous NAV(s) and by ensuring that only the investors who were due to pay the costs/fees will be affected

Incorrect application of cut-off rules

Subscription and/or redemption orders introduced by investors in due form may be executed based on a NAV that is prior or subsequent to the NAV that the investors would have obtained if the proper cut-off time had been observed. In this case, the fund must take the necessary measures to correct the loss suffered by the fund and/or by the investors.

The correction concerns all orders that were executed based on an erroneous NAV. Where investors realised a gain due to the error, they will retain the gain, and the fund must be compensated by the difference between the erroneous NAV and the corrected NAV. Where an investor suffered a loss, it must be compensated by the fund through the allocation of additional units or based on the payment of the difference between the erroneous NAV and the corrected NAV.

A well-informed/professional investor that involuntarily benefited from such an incorrect application of the cut-off rules may be requested by the fund to reimburse the amounts unduly received. However, in the case of an investor that does not qualify as a well-informed/professional investor, it would not be appropriate to request the latter to reimburse the amounts unduly received.

Furthermore, in case of an incorrect application of the cut-off:

- Ascertain that the corrective actions did not lead to a significant NAV error
- Ascertain the incorrect application of cut-off rules did not entail a breach with the provisions of Circular CSSF 04/146 (on late trading and market timing)

Investment allocation errors

In case of an allocation error, the fund must be compensated for the loss suffered in relation to the erroneously allocated investments. Where the erroneously allocated investments generated a profit, the fund will retain this profit.

In case a securities allocation error caused a significant NAV error, the same procedure for significant NAV errors must be followed.

COMPENSATION

Compensation payment

The spirit of the Circular is that the entity responsible for cause an error or a breach is responsible for reimbursing the negatively affected parties, i.e. the investors or the fund.

In case of an error/non-compliance at fund level:
- with a designated IFM, the IFM, under the supervision of the fund board, is responsible for ensuring correction of the error/non-compliance and remediate any loss suffered by the fund and/or its investors without delay
- without a designated an IFM, the fund board must ensure correction of the error/non-compliance and compensation for any loss suffered by the fund and/or its investors without delay

Compensating the fund:
- Compensation must be transferred to the fund so that it can benefit from it as soon as possible
- It is not acceptable to make compensation payments over time with instalments, nor to deduct the compensation amounts from any future remuneration to which the party responsible for the error/non-compliance could be entitled
- If compensation cannot be paid out without delay, the fund board or the IFM board, where applicable, notifies the CSSF of the underlying reasons in the notification form

Compensation to be made to investors and to the fund

<u>Intermediaries and final beneficiaries</u>
Some investors use financial intermediaries to subscribe to units of a fund. Generally, transfer agents do not always know who the underlying investor(s) is(are).

Where an error/non-compliance occurs at fund level, and where compensation must be paid out to investors, the fund must ensure that the underlying investor having subscribed or redeemed through the financial intermediary receives the compensation.

Where the UCI is not able to pay out compensation, it must nevertheless ensure that all necessary information related to the error/non-compliance is provided to the financial intermediary to take on their responsibility and proceed with the necessary compensation towards the appropriate underlying investors.

Funds must ascertain that investors are clearly informed that the rights of investors investing through financial intermediaries may be affected when compensation is paid out. This information must be disclosed in the prospectus.

<u>*De minimis* rule</u>
Funds may not pay out compensation to investors where the compensation amounts do not exceed a certain threshold, known as the *de minimis* amount, typically a fixed lump sum. The *de minimis* amount avoids that investors entitled to very low compensation amounts end up with no benefit because of the bank charges and other fees.

The *de minimis* amount must be determined at fund or sub-fund level and considering the level of bank charges and other fees which would be charged to investors.

The application and justification of the *de minimis* rule must be defined in the policy and procedures of the fund.

The *de minimis* rule does not apply to compensation paid to the fund.

<u>Allocation of additional units</u>
Funds may decide to allocate additional units to investor (or, as the case may be, fractions of units) instead of a cash payment via bank transfer. This allows for full compensation without applying the de minimis rule.

THE EXTERNAL AUDITOR

The Circular provides details on the scope of intervention and the controls to be carried out by the external auditor.

The following table summarises the external auditor's control work with regards to significant NAV errors:

NAV ERRORS	Separate Report	Special Report
UCITS / Part II UCIs		
Significant NAV calculation error entailing compensation exceeding one of the thresholds of EUR 50,000/EUR 5,000, or both thresholds		Review of all the errors
Significant NAV calculation error entailing compensation that did neither exceed the EUR 50,000 threshold, nor the EUR 5,000 threshold	Sample-based review of the errors	
Significant NAV calculation error in a closed-ended UCI (UCI Part II)	No intervention	
SIF / SICAR		
Significant NAV calculation error entailing compensation exceeding one of the thresholds of EUR 50,000/EUR 5,000 or both thresholds	Sample-based review of the errors	
Significant NAV calculation error entailing compensation that did neither exceed the EUR 50,000 threshold, nor the EUR 5,000 threshold	Sample-based review of the errors	
Significant NAV calculation error in a closed-ended UCI	No intervention	

The following table summarises the external auditor's control work with regards to investment breaches:

INVESTMENT RULES	Separate Report	Special Report
UCITS / Part II UCIs		
Active non-compliance with the investment rules entailing compensation exceeding one of the thresholds of EUR 50,000/EUR 5,000, or both thresholds		Review of all the instances of non-compliance

Active non-compliance with the investment rules entailing compensation that did neither exceed the EUR 50,000 threshold, nor the EUR 5,000 threshold	Sample-based review of the instances of non-compliance	
Passive non-compliance with the investment rules	Sample-based review of the instances of non-compliance	
SIF / SICAR		
Active non-compliance with the investment rules	Sample-based review of the instances of non-compliance	
Passive non-compliance with the investment rules	Sample-based review of the instances of non-compliance	

The following table summarises the external auditor's control work with regards to other errors:

OTHER ERRORS	Separate Report	Special Report
UCITS / Part II UCIs		
Other error entailing compensation exceeding one of the thresholds of EUR 50,000/EUR 5,000, or both thresholds		Review of all the other errors
Other error entailing compensation that did neither exceed the EUR 50,000 threshold, nor the EUR 5,000 threshold	Sample-based review of the other errors	
SIF / SICAR		
Other error entailing compensation exceeding one of the thresholds of EUR 50,000/EUR 5,000, or both thresholds	Sample-based review of the other errors	
Other error entailing compensation that did neither exceed the EUR 50,000 threshold, nor the EUR 5,000 threshold	Sample-based review of the other errors	

NOTIFICATION OF ERRORS / INSTANCES OF NON-COMPLIANCE

Notification to the CSSF

An error/non-compliance which does not entail a compensation payment to investors, the notification deadline is **4 to 8 weeks** after the date on which the error/non-compliance was detected.

Errors/instances of non-compliance implying compensation to a great number of investors in different jurisdictions must be reported within the above deadlines, without mandatorily including the date the investors are compensated. The date may be provided to the CSSF at a later stage via the complete form.

In case an error/non-compliance gives rise to the issuance of a **special report** by the external auditor, this report must be transmitted to the CSSF within **3 months** as from the date of submission of the complete notification form to the CSSF.

The new specific form for notifying significant NAV calculation errors, instances of active non-compliance with the investment rules, and any other error occurring at fund level, will be made available on the CSSF website.

Corrective actions indicated in the notification form by the fund are not subject to the CSSF's approval. The CSSF will also not provide any specific feedback to the entity which submitted a notification. However, the CSSF may at any time:

- Request additional information on the cases reported
- Request entities to apply other remedial actions (where the actions proposed are not in line with the guidelines set out in the Circular)
- Require improvements to the organisational arrangements in place at the fund level and IFM level, where applicable, where the notifications point to organisational deficiencies

Notification to other competent supervisory authorities

The competent authorities of the countries in which the units of a funds are marketed must be informed in the event of errors/instances of non-compliance, in accordance with the rules applicable in these countries.

REGULATORY REFERENCES

Circular CSSF 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
https://www.cssf.lu/wp-content/uploads/CSSF24_856eng.pdf

Circular CSSF 02/77 on the protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment
https://www.cssf.lu/en/Document/circular-cssf-02-77/

FAQ regarding Circular CSSF 02/77
https://www.cssf.lu/wp-content/uploads/FAQ_02-77.pdf

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