

**COMMISSION de SURVEILLANCE  
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 6 February 2008

To all the persons concerned

**CIRCULAR CSSF 08/337**

**Re: Entry into force of the law of 11 January 2008 and of the Grand-ducal regulation of 11 January 2008 on transparency requirements for issuers of securities**

Ladies and Gentlemen,

We are pleased to draw your attention to the entry into force of the law of 11 January 2008 on transparency requirements for issuers of securities, published in *Mémorial* A – No. 5 of 15 January 2008 (the “**Law**”). The principal purpose of the Law is to transpose Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (the “**Transparency Directive**”).

The provisions of the Law concerning information about major shareholdings replace the provisions of the law of 4 December 1992 on the information to be published when a major holding in a listed company is acquired or disposed of (the “**1992 Law**”), as amended, which is repealed. Pursuant to the provisions of the Transparency Directive, the Law extends the group of persons to whom the notification obligation shall apply. Moreover, Chapter VI, Section II of the Law sets down certain specific provisions concerning companies incorporated in Luxembourg that are inspired by the 1992 Law.

Finally, the Law also transposes the option of article 9 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (the “**IAS Regulation**”) in relation to certain transitional provisions.

We also draw your attention to the entry into force of the Grand-ducal regulation of 11 January 2008 implementing the Law and transposing Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of the Transparency Directive (the “**Implementing Directive**”), published in *Mémorial A* – No. 5 of 15 January 2008 (the “**Grand-ducal regulation**”).

Besides transposing the Implementing Directive, the Grand-ducal regulation defines the minimum content and the deadlines for the publication of quarterly financial reports, as provided for by article 5(2) of the Law.

As the Grand-ducal regulation provides additional technical explanations of the provisions of the Law, this circular sets out and specifies the regulatory framework that follows from both texts.

## 1. Introduction

Pursuant to the Transparency Directive, the issuers that are governed by that directive are required to provide ongoing and periodic information which the directive defines as “regulated information”. The scope of that term is defined in point 3 of this circular. As regards that regulated information, the Transparency Directive imposes three obligations on issuers:

- publish the regulated information;
- make this information available to an Officially Appointed Mechanism for the central storage of regulated information (OAM); and
- file the regulated information with the competent authority of the relevant home Member State.

Moreover, the Transparency Directive also specifies the exercise of the rights attaching to the securities covered and complements Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (the “**Market Abuse Directive**”) by defining the methods of disclosure of inside information referred to in article 6 of that directive for issuers that fall under its scope.

The Luxembourg legislator decided not to use the option offered in article 3(1) of the Transparency Directive which allows Member States to make issuers subject to requirements that are more stringent than those laid down in that directive.

The Implementing Directive specifies the content of the half-yearly financial reports, the notifications of major shareholdings and the methods to disclose regulated information. It also covers the conditions that the regulations of third countries must meet in order to be deemed to be equivalent to those set out in the Transparency Directive.

## 2. Scope

In general, the Transparency Directive aims at issuers of securities<sup>1</sup> admitted to trading on a “regulated market” (within the meaning of article 4(1), point (14) of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments) established or operating in a Member State of the European Union or in one of the States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union (a “**Member State**”).

It does not apply to units issued by undertakings for collective investment other than the closed-end type, or to units acquired or disposed of in such undertakings for collective investment.

In Luxembourg, the sole regulated market that exists at present is the market operated by the Société de la Bourse de Luxembourg (the “**Stock Exchange**”), the market “Luxembourg Stock Exchange”. The Law does not apply to issuers whose securities are admitted to trading on the Euro MTF market, which is also operated by the Stock Exchange.

The Transparency Directive and the Law define the “issuer” as “a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented”.

The Law and the Grand-ducal regulation both refer to issuers where Luxembourg is the home Member State. Hence, they apply

- to issuers of shares and issuers of debt securities the denomination per unit of which is less than EUR 1,000 (or the equivalent of EUR 1,000 at the date of issue if denominated in a currency other than EUR) whose registered office is in Luxembourg;
- to issuers of shares and issuers of debt securities the denomination per unit of which is less than EUR 1,000 (or equivalent to EUR 1,000), whose registered office is in a third country and where Luxembourg is the home Member State pursuant to article 2(1)(h) of the Law on prospectuses for securities (the “**Prospectus Law**”). Those are issuers of third countries that file, in addition, the

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<sup>1</sup> In accordance with article 1, point (17) of the Law, securities means “those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depository receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depository receipts in respect of such securities;

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

as defined in article 4(1), point (18) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments with the exception of those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment, as defined in Article 4(1), point (19) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, having a maturity of less than 12 months.”

Annual Document provided for in article 14 of the Prospectus Law with the CSSF (cf. circular CSSF 05/224); and

- to issuers other than issuers of shares and other than issuers of debt securities the denomination per unit of which is less than EUR 1,000 (or equivalent to EUR 1,000) and which chose Luxembourg as their home Member State, either by virtue of the fact that their registered office is in Luxembourg, or because their securities are admitted to trading on a regulated market situated in Luxembourg. This choice shall remain valid for at least three years unless their securities are no longer admitted to trading on any regulated market of a Member State.

At European level, the determination according to the criteria set down in the first two indents prevails on a possible determination according to the criteria laid down in the last indent. In practice, for example, a Luxembourg issuer that has shares admitted to trading on a regulated market in a Member State, as well as bonds whose denomination per unit is EUR 5,000 in several Member States will automatically have Luxembourg as home Member State and will not be able to make a choice according to the criteria attaching to bonds.

Article 2(3) of the Law provides for exemptions for the Luxembourg State and its communes.

Finally, the Law includes certain provisions regarding notification of major shareholdings applicable to shareholders (including depositary receipts in respect of shares) of issuers whose shares (including depositary receipts in respect of shares) are admitted to trading on a regulated market, where Luxembourg is the home Member State and to which voting rights are attached. The persons to whom those obligations apply are defined more particularly by the relevant articles of the Law.

### **3. Regulated information**

Under article 1, point (10) of the Law the notion “regulated information” means all information which the issuers are required to disclose under the Law and under article 6 of the Market Abuse Directive, namely:

- the annual financial report (article 3 of the Law);
- the half-yearly financial report (article 4 of the Law);
- the interim management statements or quarterly reports (article 5 of the Law);
- the notifications of major shareholdings (articles 8 to 12 of the Law);
- the notifications required under article 13 of the Law (trading in own shares);
- the total number of voting rights and capital (article 14 of the Law);
- the additional information to be disclosed under article 15 of the Law; and

- inside information as defined in article 1(1) of the Market Abuse Directive related directly to an issuer (article 6(1) of the Market Abuse Directive).

It should be noted that in accordance with article 2 of the Grand-ducal regulation, the choice of the home Member State shall be disclosed, stored and filed according to the same rules as apply to regulated information.

The information included in articles 16 and 17 of Chapter III, Section II of the Law, which relates to *Information for holders of securities admitted to trading on a regulated market*, shall not be considered as regulated information. Indeed, it is important for issuers to distinguish between regulated information and other information, as solely regulated information must be disclosed, stored and filed in accordance with the Law, the Grand-ducal regulation and this circular.

#### **4. Obligations of issuers and shareholders**

##### ***a. Periodic disclosure requirements***

The periodic disclosure requirements provided for in the Law apply to issuers whose securities are admitted to trading on a regulated market, which are described in point 2 of this circular. Issuers defined in article 7 of the Law, including those issuing exclusively debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 50,000 (or equivalent to EUR 50,000 at the date of issue in the case of debt securities denominated in a currency other than EUR) shall be exempt from those requirements.

It should be noted that compared to the former regime, the disclosure deadlines are shorter and, being specific provisions applicable to listed companies, differ from those laid down in the law of 19 December 2002 concerning the trade and companies register, as well as the accounting and annual accounts of companies, and in the law of 10 August 1915 on commercial companies. Moreover, certain categories of issuers are henceforth required to draw up a half-yearly report and, where applicable, interim statements.

##### **i. Annual financial reports**

The obligation to prepare an annual financial report as laid down in article 3 of the Law applies to all issuers that fall under the scope of the Law and that do not benefit from the exemptions set out in article 7 of the law. The issuer shall have a maximum of four months from the end of each financial year to make public its annual financial report. The issuer shall ensure that the report remains available to the public for at least five years.

The annual financial report shall include the following elements:

- Where the issuer is not required to prepare consolidated accounts:

- the annual accounts drawn up in accordance with the national law of the Member State in which the issuer is incorporated;
  - the audit report, drawn up in accordance with articles 51 and 51(a) of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies, as amended (the “**4<sup>th</sup> Directive**”);
  - the management report, drawn up in accordance with article 46 of the 4<sup>th</sup> Directive; and
  - the statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and that the management report includes a fair review of the development and performance of the business and the position of the issuer, together with a description of the principal risks and uncertainties that it faces.
- Where the issuer is required to prepare consolidated accounts:
- the annual consolidated accounts drawn up in accordance with the IAS regulation;
  - the annual non-consolidated accounts of the issuer;
  - the audit report(s), drawn up in accordance with articles 51 and 51(a) of the 4<sup>th</sup> Directive and in accordance with article 37 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts (the “**7<sup>th</sup> Directive**”);
  - the management report(s), drawn up in accordance with article 45 of the 4<sup>th</sup> Directive and in accordance with article 36 of the 7<sup>th</sup> Directive; and
  - the statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

It should be remembered that issuers whose registered office is in Luxembourg and which are referred to in article 1(1) on the scope of the law of 19 May 2006 on the implementation of Directive 2004/25/EC of the European Parliament and of the Council

of 21 April 2004 on takeover bids (the “**Law on takeover bids**”) shall also make public the information required under article 11 of that law in their annual management report.

ii. Half-yearly financial reports

The obligation to prepare a half-yearly report covering the first six months of the financial year under article 4 of the Law applies to issuers of shares and issuers of debt securities where Luxembourg is the home Member State and which do not benefit from the exemption under article 7 of the Law nor from the transitional exemption under article 30(6). The half-yearly report shall be made public as soon as possible after the end of the first six months, but at the latest two months thereafter. The issuer shall ensure that the report remains available to the public for at least five years.

The half-yearly financial report shall include the following elements:

- where the issuer is not required to prepare consolidated accounts, non-consolidated condensed financial statements, drawn up either in accordance with the international accounting standard applicable to the interim financial reporting adopted pursuant to the IAS regulation (the “**IAS 34**”), or in accordance with article 3(2) and (3) of the Grand-ducal regulation. The issuer shall follow the same principles for recognising and measuring as for preparing the annual financial reports; or
- where the issuer is required to prepare consolidated accounts, the condensed financial statements drawn up in accordance with the IAS 34;
- in both cases:
  - an interim management report which shall include at least:
    - an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed financial statements;
    - a description of the principal risks and uncertainties for the remaining six months of the financial year; and
    - for issuers of shares: the major related parties transactions (details relating to such transactions are provided in article 5 of the Grand-ducal regulation).
  - the audit report or, in case of a limited review of accounts, the full auditors’ reviews, if such reports have been drawn up (if not, the issuer shall mention that fact in the half-yearly report);
  - statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been

prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required under article 4(3) of the Law, and that the interim management report includes a fair review of the information required under article 4(4) of the Law.

As regards the statement required under article 4(2)(c) of the Law, it should be noted that where international accounting standards are used, the expression “true and fair view” that must be included in that statement shall be understood, as far as half-yearly reports are concerned, as a requirement of compliance of the half-yearly report with the IAS 34. Where other accounting standards are used, this expression shall be understood as reference to those accounting standards for interim financial reporting.

In this context, it should be noted that under the provisions of the Law, it is not mandatory to have the half-yearly financial report audited, as opposed to the annual financial report. Thus, it may

- be audited by an auditor as is required for the annual financial report, or
- be the object of a limited review (which must be carried out in accordance with the standard ISRE<sup>2</sup> 2400) according to the procedures that should include obtaining an understanding of the entity’s business and accounting principles and practices through detailed analytical procedures, discussions and inquiries of the issuer’s management and personnel, or
- not be reviewed in any way by an auditor.

iii. Interim management statements

Issuers of shares where Luxembourg is the home Member State may opt to prepare either an interim statement during the first and the second six-month period of the financial year as laid down in article 5 of the Law, or quarterly financial reports, in accordance with article 4 of the Grand-ducal regulation, their national legislation or rules governing a regulated market.

While interim statements cover the whole period until the date of their publication, quarterly reports cover a pre-determined period with a set date of publication that follows the end of the period covered. A Luxembourg issuer whose shares are admitted to trading on the regulated market “Luxembourg Stock Exchange” can choose between an interim management statement as referred to in the first paragraph of article 5 and a quarterly financial report the minimum content of which is laid down in article 4 of the Grand-ducal regulation.

- Arrangements relating to interim management statements:

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<sup>2</sup> International Standard on Review Engagements

Issuers that opt for the publication of an interim statement shall make public a statement during the first six-month period and another statement during the second six-month period of the financial year. Such statements, which shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement, shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period.

The statement shall include at least the following information:

- an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertaking; and
  - a general description of the financial position and performance of the issuer and its controlled undertaking during the relevant period.
- Arrangements relating to quarterly financial reports:

Issuers of shares that opt to publish quarterly financial reports may prepare them in accordance either with article 4 of the Grand-ducal regulation, their national legislation or the rules governing the regulated market on which their shares are admitted to trading.

Issuers that prepare reports as referred to in article 4 are required to publish them no later than 60 calendar days after the end of the first and third quarter of every financial year.

The quarterly financial report referred to in article 4 of the Grand-ducal regulation shall contain at least the following information:

- numerical information including annual sales in total and according to businesses, total earnings and earnings per share, as well as the relevant figures of the previous financial year; and
- a description of important events that occurred during the relevant period and their impact on the activity and financial situation of the issuer.

### ***b. Ongoing disclosure requirements***

Articles 8 to 14 of Chapter III of the Law deal with the ongoing information relating to major shareholdings. The obligations set down in those articles apply to holders of shares, including depositary receipts in respect of shares and to issuers of shares, including to issuers of underlying shares of depositary receipts. As regards the explanations below, any reference to shares shall be understood, within the limits laid down in articles 8 to 12 of the Law, as including a reference to depositary receipts in respect of shares.

#### ***i. Obligations relating to shareholders***

The Law extends the notification regime as regards threshold crossing laid down by the 1992 Law (which it repeals) by introducing new notification thresholds and by covering a larger circle of holders and issuers of shares.

- *Notification requirements*

Indeed, henceforth, the notification obligations apply to all the shares admitted to trading on a regulated market where Luxembourg is the home Member State of the issuers of those shares and provided that voting rights are attached thereto.

A shareholder who acquires or disposes of such shares shall notify the issuer and file at the same time, with the CSSF the proportion of voting rights held as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 33 1/3 %, 50 % and 66 2/3 %.

The shareholder shall also notify that proportion where there has been an event changing the breakdown of voting rights, on the basis of the information that the issuer is required to disclose pursuant to article 14 of the Law (obligation for the issuer to disclose the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred).

The voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise of the voting rights is suspended. In this context, it should be noted that the notification shall include the figures by classes of shares while the threshold triggering the notification obligation shall be the overall threshold, calculated for the voting rights held as a whole (all classes taken into account).

The notification requirements shall also apply to situations where a natural person or legal entity is entitled to acquire, dispose of, or exercise voting rights in any of the cases detailed in article 9 of the Law or a combination of them. Further details are set out in article 9 of the Grand-ducal regulation.

The notification requirements shall also apply to a natural or legal entity that holds, directly or indirectly, financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares already issued to which voting rights are attached. As far as specific financial instruments are concerned, reference should be made to article 12 of the Grand-ducal regulation.

It should be stressed that the crossing by a person of the threshold of 33 1/3 % of a company's voting rights considering the voting rights allocated to that person by the Law is not necessarily equivalent to that person gaining control of that company within the meaning of the Law on takeover bids. Hence, crossing the 33 1/3 % threshold under the Law does not necessarily entail for the person concerned the obligation to make a mandatory takeover bid as referred to in article 5(1) of the Law on takeover bids. Indeed, voting rights may be assigned to a person by the Law in circumstances where the Law on takeover bids considers that this person does not hold those voting rights. The notification that the threshold of 33 1/3 % has been crossed under the Law may nevertheless be an

indication that the person concerned comes close to the control threshold provided for by the Law on takeover bids, the crossing of which will trigger a mandatory takeover bid.

- *Exceptions*

Under certain conditions, the Law provides for exemptions applying to shares acquired for the sole purpose of clearing and settling, as well as to shares held as custodian. Moreover, the Law provides that, under certain conditions, the obligations apply only from a 10 % threshold on acquisitions and disposals by a market maker (article 8(4) of the Law). Another exemption concerns, under certain conditions, the trading portfolio of a credit institution or investment firm (article 8(5) of the Law). Finally, the Law provides, in certain cases, for exemptions for the European System of Central Banks for monetary policy purposes.

Furthermore, a legal entity is not required to make a notification, if that notification is made, where applicable, by its parent company or by the parent company of the latter.

Exemptions with respect to aggregation of holdings relating to relations between a management company or an investment firm and their parent undertaking are set out in paragraphs 4 and 5 of article 11 of the Law, as well as in article 11 of the Grand-ducal regulation.

- *Form, content and period of notification*

The notification to the issuer shall be effected as soon as possible, but no later than six trading days<sup>3</sup> following a transaction or four days following information of an event changing the breakdown of voting rights by the issuer. The CSSF publishes on its website the calendar of trading days of the regulated markets situated or operating on the Luxembourg territory.

As far as the content and form of the notification required under articles 8 and 9 of the Law are concerned, the CSSF will provide standard forms that will be published *via* a circular.

As regards the obligations to file with the CSSF, reference should be made to point 5.c of this circular.

ii. Obligations relating to issuers of shares where Luxembourg is the home Member State

The issuer of shares shall publish as soon as possible all the information contained in a notification of a shareholder. In accordance with article 11(6), the publication shall be made public no later than three trading days upon receipt of the notification. It should be borne in mind that the CSSF publishes a calendar of trading days on its website.

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<sup>3</sup> The six-day time limit results from the joint reading of article 11(2) of the Law and article 10 of the Grand-ducal regulation.

For the purpose of calculating the thresholds, the issuer shall disclose to the public the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred.

The issuer of shares shall also disclose the proportion of its own shares, where that proportion reaches, exceeds or falls below the thresholds of 5% or 10 % following an acquisition or disposal of its own shares. The publication shall be made as soon as possible, but not later than four trading days following such acquisition or disposal.

Moreover, the issuer of shares shall make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to certain classes of derivative instruments.

In reference to article 11(7) of the Law, it should be stressed that the CSSF does not disclose the information contained in the notifications filed with the CSSF.

iii. Transitional provisions that apply to holders and issuers of shares

Every issuer of shares shall disclose to the public the total number of voting rights and capital for the first time by 19 February 2008 at the latest.

Every holder of shares shall notify the issuer, at the latest on 19 March 2008, of the proportion of voting rights and capital it holds at that date (unless it has already made a notification containing equivalent information before that date).

The issuers of shares shall in turn disclose the information received in the notifications referred to above no later than on 19 April 2008.

iv. Obligations for issuers of securities other than shares

The issuer of securities other than shares shall make public without delay any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

The issuer of securities, except for public international bodies of which at least one Member State is a member, shall make public without delay new loan issues and in particular any guarantee or security in respect thereof.

v. Other ongoing obligations

Article 16 of the Law applies to issuers whose shares are admitted to trading on a regulated market. The purpose of this article is to ensure equal treatment for all shareholders that are in the same position. This article provides mainly for obligations relating to general meetings and the exercise of voting rights. Article 17 concerns issuers whose debt securities are admitted to trading on a regulated market.

The information for investors under those articles shall not be considered as constituting regulated information. Without prejudice to the obligation to make available the information in the home Member State, the obligations described below as regards the disclosure, storage and filing of regulated information shall not apply to them.

## **5. Disclosure, storage and filing of regulated information**

### ***a. Disclosure of regulated information***

In accordance with article 20 of the Law, issuers are required to disclose regulated information in a manner ensuring fast access to such information on a non-discriminatory basis. Thus, they shall use such media as may reasonably be relied upon for the effective dissemination of information to the public in all Member States.

Article 13 of the Grand-ducal regulation states the minimum standards for dissemination that apply to issuers where Luxembourg is the home Member State. The mere availability of regulated information, which means that investors must actively seek it out, is therefore not sufficient for the purposes of the Law. Accordingly, dissemination should involve the active distribution of information from the issuers to the media, with a view to reaching investors.

Issuers whose securities are only admitted to trading on a regulated market situated or operating within the territory of Luxembourg shall also comply with the provisions that apply to issuers where Luxembourg is the home Member State, even if Luxembourg is only the host Member State. Indeed, the purpose of the dissemination is notably to reach all investors of the markets on which securities are admitted to trading and to ensure the same access to such information even if the country of admission is different from the home Member State of the issuer of securities concerned.

The dissemination arrangements described above shall apply to all regulated information to be published by the issuers described above, including inside information to be published in accordance with article 6(1) of the Market Abuse Directive set out in article 14 of the law on market abuse. They thus supplement the dissemination modes described in the law on market abuse and in section 3 of circular CSSF 06/257 of 17 August 2006 concerning the coming into force of the law of 9 May 2006 on market abuse.

When filing regulated information with the CSSF (cf. point c. below), the issuer shall state the methods and dates of dissemination.

### ***b. Storage of regulated information with an officially appointed mechanism***

Article 20 of the Law introduces, among others, the obligation for the issuer to make available its regulated information to an Officially Appointed Mechanism (“OAM”).

The issuer is required to file the information with the OAM which will be designated by way of a Grand-ducal regulation.

As long as the designated OAM is not operational, issuers are exempt from the storage obligation laid down in article 20, provided that they make this information available to the public on their website. This website shall be designed in such a manner that investors are able to find easily the section setting out the regulated information. The information made available shall not be withdrawn. If an addition or correction is necessary, the correcting or additional piece of information should identify the item it modifies and should be identified as a correction or addendum.

When regulated information is filed with the CSSF (cf. point c. below), the issuer shall indicate its website address to the CSSF, as well as the exact page where the regulated information is made available. To this end, a hyperlink is sufficient.

The issuers shall ensure to comply with the obligations relating to the interim solution as regards the storage of regulated information set out above as soon as possible and by 31 March 2008 at the latest.

***c. Filing of regulated information with the CSSF***

Article 18(1) of the Law provides that the issuers whose securities are admitted to trading on a regulated market and where Luxembourg is the home Member State are required to file all regulated information with the CSSF at the time of their publication.

Issuers are also required to communicate without delay a draft amendment to the CSSF where they intend to amend their instrument of incorporation or statutes. Such communication shall be effected at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.

It should be noted that the Law does not include the possibility provided for by the Transparency Directive to exempt an issuer from publishing and filing with the CSSF the information disclosed in accordance with article 6 of the Market Abuse Directive or article 11(6) of the Law.

Pursuant to article 18(2) of the Law, the shareholders shall file information they are required to notify to the issuer in accordance with articles 8, 9, 11 and 12 with the CSSF as well.

The technical arrangements relating to the filing of regulated information with the CSSF will be specified at a later stage. In the meantime, all information may be sent *via* e-mail to [transparency@cssf.lu](mailto:transparency@cssf.lu).

## **6. Provisions relating to companies incorporated in Luxembourg**

Section II of Chapter VI of the Law sets out specific provisions that only concern companies incorporated in Luxembourg. Those are the provisions of articles 13, 14 and 15 of the 1992 Law (repealed).

Thus, article 28 of the Law provides for the suspension of the exercise of the voting rights attaching to the shares exceeding the fraction that should have been notified in accordance with Section I of Chapter III of the Law. Article 29 allows the board of directors and, as the case may be, the executive board, to postpone a general meeting in certain specific cases. Article 30 exempts certain companies incorporated in Luxembourg from the obligation to prepare their consolidated accounts in accordance with the international accounting standards provided for by the IAS regulation (the “**IAS/IFRS standards**”) for the financial years that started before 1 January 2007.

Moreover, as regards the obligations of companies incorporated under Luxembourg law, article 38 of the law of 13 July 2007 on markets in financial instruments provides that the annual accounts or the consolidated accounts of the companies incorporated in Luxembourg, whose shares or units are admitted to trading on a regulated market authorised in Luxembourg, shall be audited by an external auditor. In this context, it should be noted that in accordance with the aforementioned article, this external auditor shall have obtained prior authorisation of the CSSF.

## **7. Specific provisions for issuers incorporated in a third country**

Article 21(1) of the Law allows the CSSF to exempt an issuer whose registered office is in a third country and of which it is the competent authority owing to the fact that Luxembourg is the home Member State of that issuer from requirements laid down in the Law, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of a third country law that the CSSF considers as equivalent.

It is important to stress that issuers of third countries always remain subject to the obligation to file regulated information, under article 18 of the Law, as well as to the obligation to disclose such information, as regards the language regime (article 19 of the Law) as well as the access to regulated information (article 20 of the Law). Equivalence shall thus be limited to the substance of the relevant information. No exemption as regards the time limits set by the Law shall be accepted.

Moreover, all relevant information which may be of importance for investors in the European Union and whose disclosure is required in a third country but not under the Law, shall be disclosed in accordance with the aforementioned articles 19 and 20, even if that information is not regulated information.

In accordance with article 23(4) of the Transparency Directive, the European Commission is notably required to set up a mechanism for the determination of equivalence of accounting standards.

- *Mechanism for the determination of equivalence*

The European Commission worked out Commission Regulation EC No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (the “**Equivalence Regulation**”). This Regulation lays down the conditions under which the Generally Accepted Accounting Principles of a third country may be considered equivalent to IAS/IFRS and introduces a mechanism for the determination of such equivalence. In order to ensure that equivalence of third country accounting standards is determined, the European Commission should assess the equivalence of third country accounting standards either upon a request from the competent authority of a Member State or an authority responsible for accounting standards or market supervision of a third country, or on its own initiative.

In accordance with the Equivalence Regulation, the Generally Accepted Accounting Principles of a third country may be considered equivalent if the financial statements drawn up in accordance with those Principles enable investors to make a similar assessment of the assets and liabilities, financial position, profit and loss and prospects of the issuer as financial statements drawn up in accordance with IAS/IFRS, with the result that investors are likely to make the same decisions about the acquisition, retention or disposal of securities of an issuer.

The Equivalence Regulation provides that third country issuers may be permitted to use financial statements drawn up in accordance with the accounting standards of a third country in order to comply with obligations under the Transparency Directive for a period commencing any time after 31 December 2008 and expiring no later than 31 December 2011 in the following cases:

- i. the third country authority responsible for the national accounting standards concerned has made a public commitment before 30 June 2008 to converge these standards with International Financial Reporting Standards before 31 December 2011 and both the following conditions are met:
  - a. the third country authority responsible for the national accounting standards concerned has established a convergence programme before 31 December 2008 that is comprehensive and capable of being completed before 31 December 2011;
  - b. the convergence programme is effectively implemented, without delay, and the resources necessary for its completion are allocated to its implementation;

- ii. the third country authority responsible for the national accounting standards concerned has made a public commitment before 30 June 2008 to adopt International Financial Reporting Standards before 31 December 2011 and effective measures are taken in the third country to secure the timely and complete transition to International Financial Reporting Standards by that date, or has reached a mutual recognition agreement with the EU before 31 December 2008.

- *Transitional regime set up by the European Commission*

As regards the financial years starting before 1 January 2009, the European Commission worked out Commission Decision of 4 December 2006 on the use by third country issuers of securities of information prepared under internationally accepted accounting standards, implementing article 23(4), second subparagraph of the Transparency Directive.

In accordance with those measures, an issuer whose registered office is in a third country may prepare its annual and half-yearly consolidated financial accounts for the financial years starting before 1 January 2009 according to the accounting standards of a third country, provided that one of the following three conditions is met:

- i. the financial reporting contains an explicit and unreserved statement that it complies with IAS/IFRS; or
- ii. the financial reporting is prepared in accordance with the Generally Accepted Accounting Principles of either Canada, Japan or the United States of America; or
- iii. the financial reporting is prepared in accordance with the Generally Accepted Accounting Principles of a third country and all of the following conditions are satisfied:
  - the third country authorities responsible for those accounting standards have made a public commitment to converge them with IAS/IFRS; and
  - those authorities have established a work programme which demonstrates that progress has been made towards convergence before 31 December 2008; and
  - the issuer provides evidence that satisfies the competent authorities that the conditions in the preceding subparagraphs are met.

## **8. Entry into force and repealing provision**

This circular comes into force with immediate effect and repeals circular CAB 93/4 of 4 January 1993 in relation to the law of 4 December 1992 on the information to be published when a major holding in a listed company is acquired or disposed of.

Yours sincerely,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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Director

Arthur PHILIPPE  
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