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Newsflash – Fintech - Capital Markets

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CSSF warning notice on Initial Coin Offering

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In a precedent [newsflash](#) dated November 16th 2017, we informed you about a press release issued by the *Luxembourg Commission de Surveillance du Secteur Financier (CSSF)* whereby CSSF informed investors and other market participants that ESMA had issued a statement on ICOs setting out risks of so-called ICOs for investors. Such press release was not intended to be interpreted as a concrete position statement from the CSSF on ICOs in Luxembourg.

On March 14th 2018, CSSF issued a [warning statement](#) (the **Warning Notice**) on ICOs, the content of which is contrasting. After a short explanation on the mechanism of ICO's functioning, CSSF merely lists the potential consequences and danger for investors to engage in ICOs.

Despite the evident interest of warning the public for such type of investments, the content of the Warning Notice is, in substance, highly similar to the ESMA statement issued on November 16th 2017 on the same subject mentioned above. Therefore, is such Warning Notice not missing its objective?

It is of paramount importance for the public to receive clear guidance on the CSSF's positioning on ICOs or at least basis for structuring ICOs. Such position from CSSF would evidently be beneficial to all parties, including issuers and investors. Indeed, on the one hand, issuers would be in position to work on a duly informed basis and structured their ICOs in line with recommendations/guidelines and on the other hand investors would be placed in situation to assess carefully ICOs in which to invest while offering certain protection and simply reject the other. Ultimately, the entire market would benefit thereof.

Regretfully, CSSF does not take position nor gives any recommendations/guidelines to comply with *ad minima*. The CSSF does not prohibit ICOs and acknowledges the absence of any regulations applicable to ICOs, for the moment; nevertheless, it clearly states in its Warning Notice that it shall not hesitate to assess such fundraising method by extending its analysis to the objectives pursued in order to assess whether it may be a way to circumvent or avoid the regulations applicable to the financial sector, in particular the provisions of the law of 10 July 2005 relating to prospectuses for securities and the law of 5 April 1993 relating to the financial sector.

Some of our neighbouring countries are working hard to take to the lead on the subject of ICOs by preparing a legal framework aimed at governing those. A global public initiative supported by the regulator should be launched quickly in order to prevent Luxembourg to lose its top role as Start-up nation and hub for Fintech, ICOs being closely connected thereto.

Should you need any further information, please contact [Pierre-Alexandre Degehet](#)