

Transposition of Directive 2004/39/EC on Markets in Financial Instruments

Draft amendments to Book III of the AMF General Regulation on Investment Services Providers

INTRODUCTION

This document presents the amendments that the French securities regulator, Autorité des Marchés Financiers (AMF), is proposing to make to its General Regulation in order to transpose the Markets in Financial Instruments Directive (MiFID) and its implementing directive¹ as regards the provisions governing investment services providers (ISPs).

An outline of Book III is appended. The draft General Regulation is provided in a separate document.

Legislative work

The transposition exercise conducted by the AMF is part of the wider process of amending the Monetary and Financial Code, conducted via executive order in accordance with the authorisation given by parliament to the government to transpose the directive.

The Directorate General for the Treasury and Economic Policy submitted the proposed amendments to the legal part of the Monetary and Financial Code for public consultation in September (Books II and III) and November 2006 (Book V).

These proposals were modified following the public consultation and in response to the opinion issued by the Consultative Committee on Financial Legislation and Regulation (Comité Consultatif de la Législation et de la Réglementation Financières – CCLRF). The proposed amendments were posted on the website of the Directorate General for the Treasury and Economic Policy in early January 2007.

- http://www.dgtpe.minefi.gouv.fr/secteur_financier/dir2004-39-ce.htm

Provisions transposed into the Monetary and Financial Code are not repeated in the AMF General Regulation.

However, to ensure that stakeholders wishing to respond to the AMF consultation can situate the General Regulation in its proper context, the Comments column of the table includes references to relevant articles in the draft executive order.

¹ Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments, published in the Official Journal of the European Union on 30 April 2004 and amended, as regards certain deadlines, by Directive 2006/31/EC of 5 April 2006.

Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council.

Principles used by the AMF to transpose MiFID into the General Regulation

Transcribing the directives

The AMF has endeavoured to keep as close as possible to the wording of the directive and its implementing directive. It has made every effort to

- Transpose the rules set down by the directives while limiting the addition of specific domestic rules.

Accordingly, the transposition process has resulted in some existing provisions being removed from the AMF General Regulation, except where it was deemed appropriate and possible to retain them, in the following cases:

- where the wording of the European directive creates options or leaves space for national legislation;
 - where the provisions of the General Regulation merely apply the directive's principles to specific situations;
 - where the existing General Regulation provisions are deemed to provide essential guarantees that may fall under the rules on notifying the European Commission set out in Article 4 of the implementing directive.
- Use the terminology employed by the directives wherever possible, making only necessary adjustments.
 - Replicate the directives as they stand, while conducting additional interpretative work on certain provisions to specify exactly how they are to be applied.

Industry groups could do some of the interpretation work in the context of preparing conduct of business rules. These rules could then be submitted for AMF approval, in accordance with the mechanism currently provided for this purpose by the General Regulation.

Pronouncements and interpretations published by the AMF will also play a part in the interpretive process.

In addition, the Committee of European Securities Regulators (CESR) is continuing its efforts to promote convergent interpretation by regulators. As regards the provisions for ISPs, CESR is concentrating on the following subjects and has already initiated consultations in these areas:

- inducements;
- record-keeping;
- best execution;
- passports;
- transaction reporting.

The AMF's paper on interpreting the best execution rule, which was put out to consultation in July 2006, will be finalised in the context of CESR-led work.

- Harmonise, as far as possible, the regimes applicable to ISPs, including asset management companies, given that the directive does not draw a distinction between ISPs providing management services and other providers. As part of this process, account was taken of:
 - the AMF's shared jurisdiction with the banking authorities over ISPs other than asset management companies;
 - the single status shared by all asset management companies in France.

The General Regulation remains unchanged where:

- the areas in question are not covered by MiFID or its implementing directive. Most of the affected provisions have been grouped under a chapter entitled "Other Provisions", to distinguish them from rules derived from the MiFID directives (these include provisions resulting from transposition of the Market Abuse Directive, as well as anti-laundering rules);
- the MiFID rules exactly replicate Investment Services Directive (ISD) rules that have already been transposed into the General Regulation (this applies to the procedures governing the authorisation and programme of operations of management companies).

Maintaining the single status for asset management companies

Following cross-industry discussions, it was decided to transpose MiFID in such a way as to uphold previous decisions that resulted in the creation of a single status for asset management companies encompassing:

- entities whose main business is individual discretionary asset management (including, by extension, the management of foreign investment funds), and
- entities that manage at least one French UCITS or non-harmonised funds.

These decisions are primarily reflected in the draft executive order.

In terms of the impact on the General Regulation, this approach means that MiFID organisational requirements apply to all asset management companies, including those that do not engage in individual discretionary asset management and simply manage UCITS or non-UCITS.

With this approach, there is a risk that asset management companies whose business does not involve individual discretionary services could be forced to comply with organisational constraints that would be either inappropriate or too burdensome for the smallest of them. For this reason, the AMF conducted a comparative examination of the existing rules and the rules derived from MiFID.

As a result, management companies that do not provide individual discretionary asset management services would in principle be granted a number of exemptions from enforcing MiFID principles. These exemptions are, *inter alia*, based on the principle of proportionality set out in the directive.

Content of the consultation document

This document concerns draft Book III of the General Regulation, which has kept the title "Service Providers".

Book III comprises two titles, one on ISPs and the other on other service providers.

Title I of the existing AMF General Regulation, which deals with investment services, has been deleted, since these services are now defined in the legislation. "Other Services", i.e. account-keeping and clearing, are currently defined under Section 2 of Title I. These services will be defined in the sections that deal with the exercise of these activities, which appear under Title II on "Other Service Providers".

This consultation covers only Title I, on ISPs, because it contains the provisions that must be transposed as close as possible to the transposition deadlines. Title II, on other service providers, will be the subject of a further consultation. This will not include the provisions governing the information that account-keepers are required to provide to clients, which are taken from MiFID and are included in the appended draft.

Title I is divided into five chapters:

- Authorisation, programme of operations and passport procedures;
- Authorisation requirements for asset management companies;
- Organisational rules;
- Conduct of business rules;
- Other provisions.

Title II, on other service providers, is divided into eight chapters corresponding to those of the existing General Regulation:

- Companies other than asset management companies that manage collective investment undertakings;
- Custody account-keepers;
- Custodians of collective investment undertakings;
- Non-ISPs who are members of a regulated market;
- Non-ISPs who are members of a clearing house;
- Financial investment advisers;
- Direct marketers;
- Investment analysts not associated with an ISP.

Information sources

Directives and Regulations

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004

- http://eur-lex.europa.eu/LexUriServ/site/fr/oj/2004/l_145/l_14520040430fr00010044.pdf

Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006, amending Directive 2004/39/EC as regards certain deadlines

- http://eur-lex.europa.eu/LexUriServ/site/fr/oj/2006/l_114/l_11420060427fr00600063.pdf

Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council

- http://eur-lex.europa.eu/LexUriServ/site/fr/oj/2006/l_241/l_24120060902fr00260058.pdf

Commission Regulation (EC) 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council

- http://eur-lex.europa.eu/LexUriServ/site/fr/oj/2006/l_241/l_24120060902fr00010025.pdf

Other useful information

AMF consultation on enforcing the best execution principles in MiFID and its implementing directive

- http://www.amf-france.org/documents/general/7262_1.pdf

AMF briefing paper on MiFID: *"La directive sur les marchés d'instruments financiers : enjeux et conséquences pour la régulation française"*

- http://www.amf-france.org/documents/general/6905_1.pdf

TITLE I

MAIN AMENDMENTS TO THE PROVISIONS IN THE GENERAL REGULATION GOVERNING INVESTMENT SERVICES PROVIDERS

CHAPTER I – AUTHORISATION, PROGRAMME OF OPERATIONS AND PASSPORT PROCEDURES

SECTION 1. Asset management companies

The text reflects the different roles played by the Monetary and Financial Code and the General Regulation in the transposition process. Some existing General Regulation provisions have been deleted because they are intended for inclusion in the legislation.

The wording of the articles that remain in this section is essentially drawn from the existing General Regulation, since the MiFID rules do not affect the arrangements introduced by the ISD in terms of authorisation and passport procedures.

SECTION 2. ISPs that carry on the business of asset management as an ancillary activity or that provide investment advisory services

This section reflects amendments to Article L 532-1 of the Monetary and Financial Code, which entrusts the AMF with approving the programme of operations of ISPs that provide investment advisory services.

A number of existing General Regulation provisions have been deleted because they are intended for inclusion in the Monetary and Financial Code.

SECTION 3. ISPs that neither carry on the business of asset management nor provide investment advisory services

As with the two preceding sections, the provisions intended for inclusion in the Monetary and Financial Code have been removed from this section.

CHAPTER II – AUTHORISATION REQUIREMENTS FOR ASSET MANAGEMENT COMPANIES

SECTION 1. Authorisation requirements

There are few changes to this section because MiFID does not introduce any significant amendments to the ISD requirements.

The main change to the General Regulation concerns the legal form that an asset management company may take. The General Regulation no longer provides a list of acceptable legal forms but simply requires that the company's accounts be subject to a statutory audit.

The AMF has maintained its flexible approach on the number of senior managers that an asset management company must have, thus making it possible to waive the obligation to have two directors or corporate officers.

It is proposed that the conditions under which an asset management company may be managed by one person should be set out at a later date, in conjunction with the requirements established for ISPs other than asset management companies.

SECTION 2. Content of the programme of operations

It is stipulated here that asset management companies are subject to all the organisational rules arising from MiFID and contained in Chapter III of Title I, except for the rules on the safeguarding of assets, which do not apply to them, since the Monetary and Financial Code still prohibits asset management companies from holding funds or securities on behalf of their clients.

Furthermore, to prevent interpretational issues, the General Regulation reiterates in this section that management of a foreign investment fund comes within the definition of an asset management service, as is currently the case, along with execution by an asset management company of orders resulting from its investment decisions.

CHAPTER III – ORGANISATIONAL RULES

Chapter III on organisational requirements for service providers is divided into two sections to reflect the way that jurisdiction is shared between the AMF and the banking authorities:

- section 1 applies to all ISPs,
- section 2 sets out additional rules for asset management companies, including organisational requirements for the programme of operations and provisions governing risk management and internal control.

The amendments to the General Regulation in these areas are consistent with earlier changes made to the General Regulation that came into force in September 2006.

An introductory article describes the geographical scope of the organisational rules. This reflects the new arrangements introduced by MiFID, which establishes the principle whereby jurisdiction lies with the country that authorised the ISP. Accordingly, the rules in this chapter apply to ISPs that are authorised in France, in relation to their activities in France as well as to their activities in other Member States, whether these are performed under the freedom to provide services or via a branch.

SECTION 1 - Organisational rules applicable to all ISPs

Sub-section 1. Compliance

Compliance arrangements are the same for all service providers.

Paragraph 1, "General Provisions", repeats Article 6 of the implementing directive, which defines the compliance function as comprising two separate components:

- to advise and assist senior managers and operating staff, and
- to monitor the ISP's effective compliance with applicable professional rules.

This paragraph also sets out the rules on the resources, authority and independence of the compliance function.

Paragraph 2, "Appointment and tasks of the compliance officer", establishes the link between the compliance arrangements described in Section 1 and the rules on professional licences, which are set out under Sub-section 7 and form part of a system established by national law, pursuant to Recital 13 of the implementing directive.

Paragraph 2 makes it mandatory for all ISPs to appoint a compliance officer, as follows:

- asset management companies must appoint a compliance officer who holds a professional licence as a compliance and internal control officer,
- other ISPs must appoint a compliance officer who holds a professional licence as an investment services compliance officer.

Paragraph 3, "Organising the compliance officer function", repeats the current General Regulation provisions covering the options available to ISPs to organise the function. These options are provided as part of the rules on professional licences set out under the national provisions, which may be maintained under the directive. They include

- assigning the function to the employee of another group entity;
- delegating some tasks within the company;
- entrusting the function to a senior manager (option available to smaller structures);
- outsourcing some or all of these tasks (option available to smaller structures).

Sub-section 2. Responsibility of senior management and the supervisory function

This sub-section repeats the provisions of the implementing directive, which describes the respective responsibilities of senior management and the supervisory function in terms of ensuring compliance with the rules under the directive.

It includes provisions that require senior managers to receive reports on compliance, risk management and periodic controls. The requirement for compliance and internal control officers and investment services compliance officers to report to the AMF is covered by MiFID Article 50 on the powers to be made available to the competent authorities.

Sub-section 3. Complaints handling

This sub-section includes new provisions that transpose Article 10 of the MiFID implementing directive, which requires ISPs to establish procedures to handle complaints from retail clients.

Sub-section 4. Personal transactions

Transposition of the directive has led to significant changes to the existing rules on personal transactions.

In particular, the General Regulation no longer supplies a definition stipulating which employees occupy sensitive positions. Service providers now have full responsibility for identifying these employees, as part of their efforts to manage conflicts of interest.

Similarly, the restrictions on personal transactions, especially by traders and analysts, have been deleted from the General Regulation. Now, each service provider is left to establish rules for personal transactions that comply with the requirements of the directive.

Sub-section 5. Safeguarding of client assets

This sub-section applies in conjunction with:

- the rules to be included in Title II of Book III of the General Regulation on custody account-keeping as a related service;
- the rules arising from bank regulations, including the obligation to ensure the external segregation of the funds of investment firm clients.

The sub-section contains:

- general rules intended to safeguard client assets, which result from transposition of MiFID and its implementing directive,
- some of the rules applicable to custody account-keepers that currently appear in the chapter on custody account-keepers in Title III of Book III of the General Regulation.

Only the rules that contribute to the objective of safeguarding assets set down in the directive are included here:

- the service provider must maintain a double-entry accounting system;
- any movement of financial instruments shall be carried out only on the client's instruction;
- movements in cash and securities must be booked at the same time;
- principle whereby a financial instrument account shall not be in debit on the settlement date;
- application to the outsourcing of custody account-keeping of the rules provided for in Sub-section 5 of Section 2 on outsourcing (described below).

A separate chapter for custody account-keepers (Chapter II of Title II on other service providers) will detail the provisions of the General Regulation that deal with the technical aspects of custody account-keeping.

The provisions include:

- the rules applicable to employee savings schemes;
- steps designed to facilitate the exercise of rights attached to financial instruments;
- account terminology and operating rules;
- other practical requirements arising from the performance requirements of the custody account-keeper.

Some adjustments have been proposed to the rules derived from the directive in order to reflect the particularities of French law. This is allowed by the directive, whose purpose is not to undermine national securities ownership laws.

Thus, as regards the question of how liability is shared in the event that a client's assets are entrusted to a sub-custodian, it is proposed to maintain:

- the agency agreement rules in the General Regulation covering the division of liability between the custody-account keeper and the sub-custodian.
- the option of sharing liability between the custody account-keeper and the client when the latter is a professional investor and holds securities issued under foreign law in his account.

This rule allows professional investors to knowingly hold assets that are governed by rules that do not meet all the requisite security conditions, without forcing their custody account-keeper to bear all the risk associated with this specific situation.

Note that the words "agent or central depository" used by the AMF General Regulation replace the term "third party" used in the directive, to reflect the particularities of the structures in place in France.

Sub-section 6. Conflicts of interest

This sub-section transposes the provisions of MiFID and its implementing directive concerning the organisational measures established to manage conflicts of interest.

Under the proposed transposition, the rules for identifying conflicts of interest are applied in the event that the ISP engages simultaneously in one or more investment services and any other activity, and notably, in the case of asset management companies, in the activity of managing collective investment schemes (CIS).

It has been decided to eliminate the specific rules on asset management included in the existing General Regulation, since MiFID provides for a general mechanism that reflects a functional, rather than a business-by-business, rationale.

However, given that MiFID's requirements on managing conflicts of interest are not always suited to the specific nature of collective investment management, to ensure that professional managers in this sphere are not forced to comply with organisational requirements that do not reflect actual operating risk, it will be possible to adjust these obligations to reflect the size, structure and nature of the business, in accordance with the principle of proportionality set out in the directive.

It is also proposed to maintain two restrictions that are currently contained in the General Regulation. First, a CIS manager must never be entrusted with managing the proprietary portfolio of the promoter or custodian of that scheme. Second, the employees and officers of an asset management company must not provide for-fee advisory services to companies whose securities are held or are planned to be held in the portfolio under management.

The section also contains provisions that transpose the conflict of interest rules in the implementing directive for ISPs that produce or disseminate investment research. It has been

decided to incorporate MiFID rules only in this section. Provisions arising from transposition of the Market Abuse Directive are transferred to an ad hoc chapter of Book III entitled "Other provisions".

Sub-section 7. Professional licences

The rules in this sub-section are taken from the reforms to the General Regulation that came into effect in September 2006. They may be maintained pursuant to Recital 13 of the implementing directive.

Sub-section 8. Record-keeping

The existing provisions of the General Regulation have been replaced by new provisions resulting from transposition of the implementing directive. These provisions will be supplemented with the list of minimum records, which CESR is currently preparing as part of its work at Level 3.

It was decided to take the option provided by the implementing directive of maintaining the current provisions on recording telephone conversations. Furthermore, it is proposed to extend the scope of these provisions to asset management companies to cover reception and transmission of orders and the transactions that these companies carry out directly.

SECTION 2. Additional organisational rules for asset management companies

This section contains additional organisational rules that apply to asset management companies.

The first four sub-sections cover:

- general organisational requirements (also known as the internal control system),
- risk management,
- periodic controls (which the directive calls "internal audit"),
- organisation of the compliance and internal control functions.

The first three sub-sections incorporate the provisions of the implementing directive as well as the current provisions on seconded personnel that apply specifically to asset management companies. Each of the sub-sections stipulates that asset management companies are required to establish a control system comprising checks to ensure compliance with the general organisational requirements, risk management and periodic controls.

The fourth sub-section acts as the link between the compliance and professional licence arrangements established in accordance with provisions applicable to all ISPs, and the additional requirements that apply only to asset management companies. The sub-section defines the function of compliance and internal control officer at an asset management company as comprising the functions performed by compliance officers at all ISPs plus the specific control functions described in the three sub-sections mentioned above, which deal with general organisational requirements, risk management and periodic controls.

This sub-section incorporates, without modification, the options for the internal and external delegation of internal and periodic controls provided in the context of the compliance system. As part of the rules on professional licences set out under the national provisions, which may be maintained under the directive, the fourth sub-section describes several organisational approaches for different functions. For example, management companies are allowed to divide permanent and periodic control responsibilities between two different people; another option is to entrust permanent compliance control and permanent control excluding compliance to two different people.

The fifth sub-section deals with outsourcing, the term used by the directive to refer to both delegation and sub-contracting. The sub-section details the requirements governing outsourcing by asset management companies.

As indicated above (cf. section on the safeguarding of client assets), these provisions also apply to the outsourcing of custody account-keeping. The proposed rules are derived from MiFID and apply to all asset management companies. However, it is proposed to keep the requirement whereby AMF authorisation must be obtained before delegating financial management of a CIS, since such delegation is deemed to be a change to the terms under which the scheme was authorised. Also, it is proposed to keep the requirement whereby the client must give his agreement before management of the portfolio is delegated, in view of the *intuitu personae* nature of the mandate.

CHAPTER IV – CONDUCT OF BUSINESS RULES

SECTION 1. General provisions

This section establishes the geographical scope of application of the conduct of business rules. It follows the directive in this regard. In other words, the rules apply to service providers authorised in France, aside from services provided in other Member States party to the European Economic Area (EEA) Agreement by branches established in those Member States.

The conduct of business rules also apply to the branches established in France of service providers that have been authorised in another Member State. CESR is working with the European Commission to clarify the practical application of the principles arising from the directive in this area.

The section contains the following general provisions:

- it repeats the current arrangements whereby the AMF approves professional conduct of business rules, since these arrangements are outside the scope of the directive;
- the general principle that the client's interests must always take first priority, which is set out in the directive, and the two principles that apply this general principle and that are currently included in the General Regulation: namely, the obligation for the ISP to refrain from taking any action intended to favour its own interests or those of its partners or shareholders to the detriment of the interests of its clients; and the provision intended to prevent excessive portfolio turnover, which is applicable to management service providers.

SECTION 2. Investor categorisation

This section contains general provisions setting out required due diligence in terms of identifying and categorising clients as retail clients, professional clients or eligible counterparties.

It also contains provisions that the law entrusts to the AMF General Regulation regarding the rules on eligible counterparties (Sub-section 2), clients who are considered to be professionals (Sub-section 3) and clients who may be treated as professionals on request (Sub-section 4). The MiFID procedures (Annex II) on changing categories are included here.

SECTION 3. Provision of information to clients

This section repeats the many provisions of the implementing directive concerning the provision of information to clients. Because of the way the draft executive order organises transposition between the Monetary and Financial Code and the AMF General Regulation, the general principles set out in the framework directive, which apply to all professional and retail clients, are to be transposed into the Monetary and Financial Code.

Accordingly, the General Regulation details:

- in **Sub-section 1**, the **conditions that information provided to retail clients must satisfy** in order to comply with the general principle whereby all information provided by ISPs to clients or potential clients, including marketing communications, must be fair, clear and not misleading.

This sub-section also contains provisions concerning content and the time at which information should be communicated, depending on the nature of the information, to professional and retail clients.

It also details the requirements pertaining to the medium used to communicate information ("durable medium").

- in **Sub-section 2**, the provisions applicable to **marketing communications**, a term that is used for the sake of consistency with the term used elsewhere in the General Regulation in accordance with the Prospectus Directive.
- in **Sub-section 3, the information that every service provider must provide** to clients about itself, the services it provides and the financial instruments that it offers.

The detailed requirements under these rules are adjusted depending on whether the client is a professional or a retail client.

This sub-section also includes special provisions governing the information that ISPs acting as custody account-keepers must supply, as well as special provisions governing the information that ISPs providing asset management services must supply.

- in **Sub-section 4**, the provisions of the implementing directive on the **information about costs and associated charges that must be provided to retail clients**.

SECTION 4. Assessment of suitability and appropriateness of the service to be provided.

This section transposes the provisions of the framework directive and the implementing directive on assessing the suitability of advisory and asset management services and the appropriateness of other services provided to the client.

The principles contained in the Monetary and Financial Code are not repeated here. For example, the Code sets out the principle whereby the service provider is required to refrain from recommending financial instruments or providing asset management services if the client does not provide the information required to perform the requisite assessment.

SECTION 5. Client agreements

The General Regulation supplements the provisions transposed at the legislative level with the following:

- **Sub-section 1** contains provisions on the **content of the agreement**. Some of these provisions apply to asset management, while others apply to services other than asset management and investment advisory services. The content of client agreements comes outside the scope of MiFID and is subject to Member States' national laws, as stated in Recitals 41 and 62 of the implementing directive. This section repeats the existing provisions of the General Regulation. It is proposed that they should apply to retail clients only;
- **Sub-section 2** contains provisions from the implementing directive on the **medium used to set out agreements entered into with retail clients** to provide investment services other than investment advisory services. Furthermore, it is

planned to maintain the requirement that the agreement must be prepared on a durable medium when the ISP carries on the business of clearing on behalf of a client, whether that client is a professional or retail client.

SECTION 6. Handling and executing orders

The law gives the AMF General Regulation responsibility for establishing the **conditions** that all ISPs **must satisfy when handling client orders**. These rules, which are set out in the implementing directive, are included without modification in **Sub-section 1** of this section.

The rules may be interpreted to clarify how they are to be applied, notably as regards service providers that offer asset management services. This sub-section also includes a separate paragraph on market integrity that maintains the provisions in the General Regulation taken from the Market Abuse Directive. The wording of the market abuse provisions has been modified to reflect the introduction of competition between regulated markets and other order execution venues.

Sub-section 2 contains the rules governing the **requirement to obtain the best possible result when executing orders**. Sub-section 3 sets out the requirements for service providers that receive and transmit orders or that manage portfolios. The process used to transpose the directive into the General Regulation is consistent with the draft executive order, which transposes some of the provisions of the framework directive. It is also consistent with the document put out to consultation by the AMF in July 2006, which will be finalised in the context of work being done by CESR.

SECTION 7. Inducements

This section repeats the provisions of Article 26 of the implementing directive on "fees, commissions or benefits" that are received or paid by the ISP and that could place the provider in a conflict of interest.

The existing General Regulation provisions that fall within the scope of this general principle have been deleted. The requirements for applying these provisions will be stipulated taking into account work done by CESR.

Pending the outcome of this work, a sub-section has been included that groups together the provisions specific to CIS management. This sub-section repeats the existing General Regulation provisions that apply solely to CIS management.

SECTION 8. Information regarding the provision of investment services

This section transposes the principles contained in the implementing directive that govern the reports that service providers are required to send to their clients, including transaction notices and portfolio statements.

Furthermore, it is proposed to maintain the existing provisions in the General Regulation concerning the reports that service providers offering CIS management services must provide to their clients.

CHAPTER V – OTHER PROVISIONS

SECTIONS 1 to 3

This chapter includes the provisions that do not come under the scope of MiFID and that result from obligations associated with the prevention of money laundering or with transposition of the Market Abuse Directive, concerning:

- the production and dissemination of investment research
- management of privileged or confidential information and performance of corporate finance transactions
- suspicious transaction reporting to the AMF.

SECTION 4. Publication of transactions in equities admitted to trading on a regulated market

Chapter V also contains a section on post-trade transparency requirements for ISPs.

This section transposes the provisions of Article 28 of the directive that are not repeated in the executive order and also includes a reference to the directive's implementing regulation, which sets out how the information in question is to be made public.

All service providers executing transactions in equities admitted to trading on an EEA regulated market are subject to this obligation. This therefore includes asset management companies when they themselves execute orders resulting from investment decisions that they take on behalf of their clients.

It is not proposed to extend the ISP disclosure requirements to financial instruments other than those referred to in the directive.

SECTION 5. Reporting transactions to the AMF

Section 5 of Chapter V contains rules on reporting transactions to the AMF that transpose the provisions of MiFID Article 25.

In accordance with the Monetary and Financial Code, which transposes the obligation set down in the framework directive and gives the AMF General Regulation responsibility for establishing the procedures that ISPs must follow when reporting to the AMF, transposition of the directive has been organised around the following principles:

- The arrangements apply to all ISPs and to the French branches of European institutions.

The target category therefore includes asset management companies, but only to the extent that they themselves perform transactions.

- The reporting requirements cover all financial instruments admitted to trading on an EEA regulated market, regardless of the trading venue, as well as financial instruments admitted to trading on an organised multilateral trading system, to the extent that these systems are subject to market abuse regulations (Alternext).
- It is proposed to maintain the reporting requirements for order receivers/transmitters that are also custody account-keepers.
- It was not felt necessary to repeat the list of required information given in Article 25(4) of the directive, insofar as the listed information makes up only part of the information required under the directive's implementing regulation.

Instead, reference is made to the relevant provisions of the regulation, which apply automatically. However, the AMF plans to ask for two additional pieces of information, namely the amount of the transaction and the theoretical settlement date for the financial instrument, as agreed by the parties, pursuant to Article 13(3) of the implementing regulation.

- As regards reporting channels, it is proposed to include the different systems provided for by the directive.

The technical procedures for making reports and the conditions under which the various channels may be used shall be specified in an instruction, as will the conditions that these reporting systems must satisfy.

- It is proposed to maintain the principle whereby the obligation to report transactions may be waived if transactions carried out by an ISP are reported to the AMF directly by the order matching system or by the reporting system approved by the competent authority, or by the regulated market or MTF through whose systems the transaction was completed.

The instruction shall also set out the requirements for permitting such waivers.

- Furthermore, insofar as the European regulation excludes temporary disposals of securities from the transaction reporting requirements, it is proposed to delete the obligations in this regard that are currently included in the General Regulation.

TITLE II

OTHER SERVICE PROVIDERS

An **additional consultation** will be held on the harmonising provisions used in connection with transposition of MiFID.

However, MiFID-related amendments have already been prepared concerning the information that custody account-keepers must provide to clients.

ANNEX

OUTLINE OF BOOK III

TITLE I – INVESTMENT SERVICES PROVIDERS

CHAPTER I – AUTHORISATION, PROGRAMME OF OPERATIONS AND PASSPORT PROCEDURES

SECTION 1. Asset management companies

Sub-section 1. Authorisation and programme of operations

Paragraph 1 – Issuance of authorisation

Paragraph 2 – Withdrawal of authorisation and deregistration

Sub-section 2. Passport

SECTION 2. ISPs that carry on the business of asset management as an ancillary activity or that provide investment advisory services

Sub-section 1. Approval of the programme of operations

Sub-section 2. Passport

SECTION 3. ISPs that neither carry on the business of asset management nor provide investment advisory services

Sub-section 1. Remarks on the application for authorisation

Sub-section 2. Passport

CHAPTER II – AUTHORISATION REQUIREMENTS FOR ASSET MANAGEMENT COMPANIES

SECTION 1. Authorisation requirements

SECTION 2. Content of the programme of operations

CHAPTER III – ORGANISATIONAL RULES

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The [draft General Regulation \(in French only\)](#) has been put out to public consultation until 1 March 2007

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