



Oversight of Market Infrastructures and the Safekeeping of
Client Securities Department

Recognition of Foreign Exchanges in France

The purpose of this summary is to provide an overview of the laws and regulations applying to foreign exchanges which seek to develop activities in France, either by installing trading terminals or by providing direct access to their electronic trading system (remote membership).

This document deals more specifically with foreign markets that are not European regulated markets pursuant to the Directive 2004/39/EC on Markets in Financial Instruments (MiFID).

Such exchanges (e.g. foreign markets based in jurisdictions that are outside the European Economic Area or European commodities exchanges that are not covered by the MiFID regime) are submitted to prior recognition by the French Ministry of Finance, following a detailed assessment by the Autorité des Marchés Financiers (AMF), as explained in this memo.

This document is not intended to be legal advice, nor is it a substitute for legal advice.

I./ The European regulatory framework for EEA regulated markets

The legislation in the EU and in EEA countries concerning investment firms and regulated markets in financial instruments is based upon the Markets in Financial Instruments Directive (2004/39/EC), generally known as MiFID, which entered into force on November 1st, 2007.

Mutual recognition of EEA firms' authorizations

The directive allows the possibility of using the authorization acquired in one EU/EEA member state in order to conduct business in another member state according to the system of mutual recognition, often referred to as passporting. Hence, a firm must first obtain authorization in one member state, its home member state, where it has its legal seat. It can access another EU/EEA market by setting up a branch in that EU/EEA country, the host member state, or by providing services into the host member state without setting up a permanent place of business there.

European regulated markets

Under MiFID, regulated market are defined as “multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its nondiscretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III”. This status is exclusively limited to exchanges based in the EEA and fulfilling the said conditions.

In every EEA country, national authorities draw up the list of “regulated markets” that are submitted to their direct supervision. This list is then compiled at the European level by the Commission and published in the Official Journal of the European Commission and made publicly available on the CESR MiFID website (mifidatabase.cesr.eu).

The marketing of financial instruments that are traded on these regulated markets is authorized throughout the EEA for intermediaries that use the European passport. This applies to intermediaries that fulfill the legal conditions to make use of the European passport and that have notified their competent national authority of their intention to provide cross-border services. That competent authority will then inform the authority of the member state.

II./ The ministerial recognition regime applicable to foreign exchanges

Non-EEA foreign markets (or EEA markets that are not eligible for the Directive) are eligible for a specific national dispensation regime of ministerial recognition.

This recognition is a prerequisite for any intermediaries that solicit the French public for trades on these markets. It is also required before setting up trading screens giving direct access to the exchange, considered as a form of indirect soliciting in France.

Legal references

The Article L423-1 of the French Monetary and Financial Code provides that:

“The public may only be approached, in any form whatsoever and by whatever means, directly or indirectly, in connection with transactions relating to a foreign market for transferable securities other than a regulated market of a European Economic Area Member State, for negotiable futures contracts or any other financial product, if that market has been recognized as determined by decree, and subject to reciprocity.” (Unofficial translation)

The recognition procedure is set out Articles D423-1 to D423-4 of the French Monetary and Financial Code

The recognition procedure in a nutshell (see description of the full procedure on following pages)

This recognition procedure is:

- Submitted to a test of [overall] equivalence between the investor protection, security, surveillance and supervision rules of the relevant market and the rules applicable in France. It is also submitted to the availability of equivalent treatment for French intermediaries, French regulated markets and their products in the country of the applicant market
- Approved by “Arrêté” (Order) of the Minister of the Economy following a formal opinion from the Autorité des Marchés Financiers (AMF).

III./ A STEP-BY-STEP GUIDE TO THE RECOGNITION PROCEDURE

1. Letter of application to the Minister of Economy (Treasury)

The letter to the Minister is to be signed by the Chairman of the applicant market (or by any individual authorized to sign on behalf of the market). Concerning the documents to be attached, see point 4 of this guide.

In order to expedite the process, it is advisable to copy the application letter with attachments to the “*Direction du Trésor*” (Treasury’s Office) and to the AMF (see template on page 7).

2. Formal transmission of the application by the Treasury to the AMF

The application to the Minister will be followed by a request by the Treasury to the AMF to start its formal review of the application, with a view to providing the Minister with a recommendation on the recognition.

3. Main assessment criteria used by the AMF

The AMF verifies that the application complies with the criteria listed above (Articles D423-1 to D423-4 of the French Monetary and Financial Code).

The assessment is made by the Department of Market Infrastructures at the Market Intermediaries and Asset Management Division. As mentioned earlier, the criteria used in the analysis concern the equivalence with the French laws, rules and regulations of the investor protection regime and the surveillance and supervisory framework of the applicant market. The analysis also considers whether French regulated markets and their products may benefit from equitable treatment in the home country of the applicant market.

4. Documents reviewed by the AMF

The AMF assessment is essentially focused on the market's organization and rules as well as on the main applicable national securities laws and regulations.

The AMF will review, inter alia, the following areas:

- (i) the shareholder structure and corporate governance arrangements of the exchange;
- (ii) the regulatory framework of the exchange (regulatory status, main laws and regulations applicable to it):
 - respective powers and competences of the exchange regulator/supervisor/self-regulatory organizations,
 - laws and regulations and procedures governing the adoption of and changes to the exchange rules,

- rules governing the admission of members,
- laws, regulations and market rules governing the admission of financial instruments to trading,
- investigation, enforcement and sanctioning power of the exchange, as compared to the exchange's statutory regulator. Specific scrutiny is focused on the competence of the exchange and/or its statutory regulator to investigate and sanction potential misconduct from members based in France.

(iii) the main financial instruments listed/traded (identification of the most actively traded instruments);

(iv) market model;

(v) trading platform (technology used) and business continuity policy;

(v) upstairs trading mechanisms, if applicable (e.g. market rules regarding block trades and exchange for physicals);

(vi) pre and post-trade transparency rules;

(vii) audit trail, recordkeeping requirements (applicable to the exchange itself and to its members) ;

(viii) market monitoring (e.g. real-time market surveillance policy);

(ix) CCP, clearing and settlement mechanisms;

(x) investor compensation scheme;

(xi) cross-membership agreements, links with other exchanges.

Note: When the applicant market has been recently recognized or approved in another jurisdiction, it may be advisable to provide the AMF with a copy of the recognition decision (e.g. copy of a US CFTC ruling approving a market as designated exchange, or similar decision from the UK FSA). This is of particular interest for decisions that were accompanied by background information relating to the assessment performed by the relevant regulator. In an effort to avoid duplication of procedures, the AMF will take these elements into consideration in its own assessment as much as possible and with due consideration of their relevance to the application made in France.

5. Advice of the AMF sent to the Minister

Depending on the information provided, the AMF may seek clarifications from the applicant market or from its regulator and/or supervisory authority. Also, a visit to the applicant market is generally made as part of the assessment.

6. Implementation of a regulatory framework enabling the exchange of information between the AMF and the home regulator of the applicant market

According to the French Monetary and Financial Code, authority is vested in the AMF to protect "savings invested in financial instruments and all other investments offered to the public, the investor disclosure and the proper functioning of financial instrument markets". (Unofficial translation)

In order to discharge its specific mission regarding the protection of investors, the AMF requires, prior to recognizing a foreign market, that a regulatory framework be established so as to permit the exchange of information with the relevant national authority regulating the market.

To this end, the AMF has signed more than 20 Memorandums of Understanding or letters with regulators from outside the EEA. Concerning the EEA, the Committee of European Securities Regulators (CESR) brings together the statutory commissions of this area. These 27 commissions are linked by a Multilateral Memorandum of Understanding. (www.cesr-eu.org). As regards the US, it may be noted that a dozen US derivatives markets have already been recognized, within the framework of a regulatory cooperation with the US Commodity and Futures Trading Commission (CFTC).

7. Formal opinion of the AMF expressed to the Minister of the Economy

Depending on the results of the general assessment of the market and its regulatory framework, the AMF will decide to express either a favorable or an unfavorable opinion to the Minister. This opinion is adopted in a plenary session of the AMF Board.

8. Signature by the Minister of the Order of recognition, to be published in the French official gazette

Upon receiving the opinion of the AMF, the Minister will decide whether to recognize the market. If he decides favorably, he issues an Order [*“Arrêté”*] of recognition, which is published in the official gazette [*“Journal Officiel”*].

The Minister will then inform the market that it has been recognized.

9. Steps to be followed by the recognized market

In addition to the laws and regulations applicable to the provision of financial activities in France, the newly recognized foreign market will have to comply more specifically with the requirement concerning the information to be disclosed to the investors.

The main applicable regulatory provisions are: Articles 251-3, 251-5 and 251-6 of the AMF General Regulation.

Annex A:
Indicative template for the letter of application for recognition
to be sent to the Minister of the Economy

[INDICATIVE FRENCH TEMPLATE FOR OFFICIAL USE]

*Monsieur Pierre Moscovici
Ministre de l'Economie et des Finances
139, rue de Bercy
75572 PARIS CEDEX 12
FRANCE*

Monsieur le Ministre,

En application des articles L423-1 et D423-1 à D423-4 du Code monétaire et financier, j'ai l'honneur de solliciter la reconnaissance en France du [.....nom du marché].

J'ai pris note du fait que, conformément à la réglementation applicable, cette reconnaissance est dépendante de l'équivalence des règles de protection des investisseurs, de sécurité, de surveillance, de contrôle de [.....nom du marché] avec celles des marchés réglementés français et de l'équivalence de traitement pour les intervenants et les produits des marchés réglementés français dans le pays du marché étranger sollicitant sa reconnaissance.

Afin de vous permettre de juger des éléments cités ci-dessus, je vous adresse également une copie des règles du [.....nom du marché] ainsi que des principaux textes législatifs et réglementaires applicables aux activités financières conduites sur le [nom du marché]. J'adresse également copie de ces documents à l'Autorité des marchés financiers.

[...]

Copie:

*Mme Delphine D'Amarzit
Chef du Service de Financement de l'Economie
Direction du Trésor
Ministère de l'Economie et des Finances
139, rue de Bercy
75572 PARIS CEDEX 12
FRANCE*

*M. Philippe Guillot
Directeur
Direction des marchés
Autorité des Marchés Financiers
17 Place de la Bourse
75082 PARIS CEDEX 2
FRANCE*

[UNOFFICIAL ENGLISH TRANSLATION]

*Monsieur Pierre Moscovici
Ministre de l'Economie et des Finances
139, rue de Bercy
75572 PARIS CEDEX 12
FRANCE*

Mister Minister,

In accordance with the provisions of Article L423-1 and of the Articles D423-1 to D423-4 of the French Monetary and Financial Code, I wish to apply for recognition in France of [name of the market].

I am duly aware that, in accordance with the above provisions, this recognition is subject to the equivalence between the investor protection, surveillance and supervision rules of [name of the market] and the rules in force in the French markets. I am also aware that, in accordance with the same decree, such recognition is also dependent on the condition that equivalent treatment be made available to French intermediaries, French regulated markets and their products in the home country of the applicant market.

In order to allow you to assess compliance with the above criteria, I enclose a copy of the rules of [name of the market] as well as a copy of the main securities laws and regulations applicable to activities conducted on [name of the market]. I am also sending a copy of these documents to the Autorité des Marchés Financiers.

[...]

Copy to:

*Mrs Delphine D'Amarzit
Chef du Service de Financement de l'Economie
Direction du Trésor
Ministère de l'Economie et des Finances
139, rue de Bercy
75572 PARIS CEDEX 12
FRANCE*

*Mr Philippe Guillot
Executive Director
Markets
Autorité des Marchés Financiers
17 Place de la Bourse
75082 PARIS CEDEX 2
FRANCE*

CONTACT PERSONS

FOR ENQUIRIES CONCERNING MARKET RECOGNITION:

Ministère de l'Economie et des Finances

Mrs. Dorothée Stik: Tel + 33 1 44 87 70 18 (Treasury Directorate General – Financial Markets Unit)
dorothee.stik@dgtresor.gouv.fr

Autorité des Marchés Financiers (AMF)

Mrs Valérie Sahuc: v.sahuc@amf-france.org (Market Infrastructures)
Mrs Delphine Vandebulcke : d.vandebulcke@amf-france.org (Market Infrastructures)