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**CATALOGUE OF FRENCH
STATUTORY AND REGULATORY
MEASURES APPLICABLE TO THE
MARKETING OF SHARES OR
UNITS IN FOREIGN UCITS IN
FRANCE**

amf-france.org

INTRODUCTION

This document has been prepared pursuant to Article 91(3) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 (the “UCITS IV directive”) . It sets out France’s main financial law provisions stemming from the Monetary and Financial Code, the General Regulation of the Autorité des Marchés Financiers (AMF), and the AMF’s instructions, positions and recommendations applicable to the marketing in France of share or units of foreign undertakings for collective investments in transferable securities (UCITS) as authorised in accordance with the UCITS IV directive. However, it does not refer to the provisions already covered by UCITS IV (e.g. rules governing publication of the prospectus or the Key Investor Information Document, which are already provided for in the directive), particularly where a UCITS is subject to the rules of its home country. Neither does this document refer to other applicable provisions arising, for example, from contract law or consumer law. The fact that this document does not deal with the marketing of other collective investment undertakings does not mean that there is no legal framework in this area. In other words, distributors must comply with all relevant provisions, regardless of the type of undertaking they are marketing.

Pursuant to AMF Position 2014-04 (Guide to UCITS, AIF and other investment fund marketing regimes in France), the act of marketing units or shares of a UCITS consists in presenting them on French territory by different means (advertising, direct marketing, advice...) with a view to encouraging an investor to subscribe to or purchase them.

However, the following shall not be considered acts of marketing in France:

1. the purchase, sale or subscription of units or shares of a UCITS in response to a client’s unsolicited request to purchase a specifically designated UCITS or AIF, provided that the investor is authorised to do so;
2. the purchase, sale or subscription of units or shares of a UCITS under the terms of a third party portfolio management agreement, provided that such financial instruments are authorised in the investor’s portfolio;
3. the purchase, sale or subscription of units or shares of a UCITS within the framework of the financial management of a UCITS or AIF, provided that such financial instruments are authorised in the assets of the UCITS or AIF;
4. the practice which, for management companies or third parties acting for their account, consists of contacting fifty investors at most in order to estimate their level of interest before launching a UCITS, provided:
 - such practice is conducted among professional investors, and
 - such practice does not involve the delivery of a subscription form and/or document presenting definitive information about the characteristics of the fund, allowing these investors to subscribe, or undertake to subscribe, for units or shares of the UCITS for which the investors' interest is being ascertained. Should any of the investors contacted subscribe at a later time, however, this may not be considered as a subscription for UCITS units or shares in response to a client's request within the meaning of 1;
5. the purchase, sale or subscription of:
 - UCITS units or shares for the people mentioned in Article L. 533-22-2 of the Monetary and Financial Code within the framework of the asset management company's remuneration policies and practices,
 - units or shares for the management team of the management company that manages them, its senior managers or the management company itself;
6. the over-the-counter sale of units or shares of a UCITS between two investors (transactions on the secondary market), provided the sale is not organised by the management company or by a third party;

7. the participation of a management company in conferences or the organisation of investor meetings to inform investors about changes and trends in the market and the activities of the management company (management team, management strategies, funds that may no longer be subscribed and any other general communication), provided:
 - the conferences or meetings are reserved for professional investors, and
 - there is no solicitation to invest in a specific UCITS, or communication about a UCITS whose units or shares may be subscribed;
8. a management company's response to a request for proposals accompanied by specifications launched by a professional investor who is a legal entity to create a UCITS.

Under no circumstances do these exceptions allow for the avoidance of marketing procedures or passport procedures where these are required. The AMF also highlights the management company's obligation to always act in an honest, fair and professional manner that promotes the integrity of the market (Article L. 533-1 of the Monetary and Financial Code, see also Article 14, paragraph 1 a) of Directive 2009/65/EC).

Distributors of UCITS units or shares are responsible for determining, under the supervision of the competent authorities and courts, whether they are actually engaged in marketing activities in France. This definition of acts of marketing does not rule out definitions proposed by the competent authorities of a foreign country if plans are made to subscribe for or acquire units or shares of a UCITS after an act has occurred in that country. exceptions ne doivent en aucun cas permettre à la société de gestion de se soustraire aux procédures de commercialisation ou de passeport lorsqu'elles sont requises. De plus, la société de gestion doit, en toutes circonstances, agir d'une manière honnête, loyale et professionnelle qui favorise l'intégrité du marché (article L. 533-1 du code monétaire et financier, voir aussi article 14 paragraphe 1 a) de la directive 2009/65/CE).

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1. RELATIONS BETWEEN FOREIGN UCITS AND THE AMF

Notification procedure for marketing foreign UCITS in France

Statutory provisions

Article L. 214-1 II(2), Monetary and Financial Code

AMF Instruction

Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and reporting for French and foreign UCITS marketed in France - Article 36

Rule overview: Any UCITS formed under foreign law and authorised in accordance with the UCITS IV directive must be notified to the AMF by the competent authority of the fund's home state before it can market its shares or units in France.

The notification file for marketing a UCITS or UCITS sub-fund in France includes:

1. the notification letter containing information about the proposed arrangements for marketing the shares or units in France, including details of each category of units or shares, where such is the case;
2. the fund rules or constitutive instruments;
3. the prospectus and, where they exist, the latest annual report and any subsequent half-yearly report;
4. the attestation from the supervisory authority;
5. the Key Investor Information Document (KIID), translated into French;
6. proof that the AMF filing fee has been paid.

The notification file is emailed directly to AMF by the competent authority of the fund's home member state. The AMF acknowledges receipt of the file when it arrives. If the file is incomplete, the AMF contacts the competent authority of the fund's home state.

The competent home authority is informed within five business days that the full file has been taken into consideration.

Regarding the notification letter sent to the AMF concerning the marketing of the fund or sub-fund in France, no information other than that stipulated in Annex 1 of European Regulation 584/2010 of 1 July 2010 is required, apart from proof of payment of the AMF's fee in accordance with Article L. 621-5-3 of the Monetary and Financial Code.

□ Appointment of a centralising correspondent for UCITS authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 and set up under foreign law

Regulatory provisions

Article 411-135, AMF General Regulation (which refers to Article L. 214-10(1) I, Monetary and Financial Code)

AMF Instruction

Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and reporting for French and foreign UCITS marketed in France - Article 38

Rule overview: A foreign UCITS marketed in France has to appoint and to notify the AMF from the filing of the notification a centralising correspondent, in accordance with the above provisions.

In particular, pursuant to Article 411-135 of the AMF General Regulation, the centralising correspondent and any other correspondents, which must belong to one of the categories referred to in Article L. 214-10(1) I, Monetary and Financial Code, are contractually bound to provide the following financial services:

1. processing subscription and redemption requests;
2. making coupon and dividend payments;
3. supplying information documents to investors;
4. providing shareholders/unitholders with special information in the cases provided for in the above instruction.

Where the UCITS is not accepted by the central depository in France, the agreement entered into by the centralising correspondent and the UCITS may provide that the centralising correspondent be responsible only for the service referred to in item 3 and that the UCITS remain responsible for the services referred to in items 1, 2 and 4. In this case, the UCITS shall inform the centralising correspondent that the services it remains responsible for are being performed and forward a copy of the information referred to in item 4 to the centralising correspondent.

The centralising correspondent is also responsible for paying the annual set fee, in accordance with Article L. 621-5-3 of the Monetary and Financial Code.

In the case of a single correspondent, the correspondent must perform all the functions listed above.

Fees payable to the AMF

Statutory provisions

Article L. 621-5-3 I 4°, Monetary and Financial Code

Regulatory provisions

Article D. 621-27 4, Monetary and Financial Code

Article 411-135, AMF General Regulation

Rule overview: Foreign UCITS are subject to a set fee, as provided in the above provisions. The UCITS' centralising correspondent is responsible for paying the fee to the AMF. The amount is 2,000 euros per sub-fund or per UCITS with no sub-funds. The fee is payable on the day the authorisation application is filed with the AMF and on 30 April of each subsequent year.

Sending information to the AMF

AMF Instruction

Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and periodic disclosures of French and foreign UCITS marketed in France - Article 39

Rule overview: When a foreign UCITS is marketed in France, it must send the information referred to in the above instruction to the AMF, i.e. the annual and half-yearly reports, changes affecting the fund and amendments to its Key Investor Information Document and prospectus, and post-filing changes to the UCITS that will affect its marketing in France. This information is emailed to the AMF at europeanopcvm@amf-france.org.

2. SOLICITING, ESTABLISHING A RELATIONSHIP WITH AND INFORMING INVESTORS

General provision on investor solicitation

Regulatory provisions

Article 411-131, AMF General Regulation

Rule overview: In accordance with this article of the AMF General Regulation, soliciting the public to invest in foreign UCITS is subject to the same provisions as those applicable to French UCITS.

Direct marketing of banking or financial products and services

Statutory provisions

Articles L. 341-1 to L. 341-17, Monetary and Financial Code

Regulatory provisions

Articles D. 341-1 to R. 341-16, Monetary and Financial Code

Rule overview: Direct marketing of financial products or services is an active selling method regulated under the Monetary and Financial Code. This regime applies whenever banking or financial products and services are marketed directly in France, including where only the person solicited is based in France. There are, however, some exceptions, notably where the persons contacted are qualified investors.

Advertisements: content and dissemination of advertisements

Regulatory provisions

Articles 314-6, 411-126 and 411-132, AMF General Regulation¹

AMF Instruction

Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and reporting for French and foreign UCITS marketed in France - Article 37 (for foreign UCITS)

AMF positions and recommendations

AMF position-recommendation 2011-24: Guide to drafting collective investment marketing materials and distributing collective investments

Recommendation AMF DOC-2017-07: Future performance simulations

Rule overview: UCITS advertisements intended for investors are subject to some formal requirements. In particular, they must be clearly identifiable as advertisements, be fair, clear and not misleading (otherwise, the AMF may order the presentation or content to be modified) and mention the existence of the prospectus and the availability of the Key Investor Information Document. Advertisements must also comply with the requirements of the aforementioned provisions.

Information about investor compensation

Statutory provisions

Articles L. 322-1 to L. 322-10 and L. 533-23, Monetary and Financial Code

Rule overview: Before entering into a business relationship with clients, an investment services provider authorised in France or operating under the right of establishment must inform them that an investor compensation scheme applies to the envisaged investment(s); it must also inform them about the amount and extent of the indemnity and, where appropriate, the identity of the scheme.

Distance marketing of consumer financial services

Statutory provisions

Articles L. 343-1 and L. 343-2, Monetary and Financial Code

Rule overview: These provisions result from implementation of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services.

Language used in information documents

Regulatory provisions

Articles 411-105 and 411-129 III, AMF General Regulation

¹ See Article 44 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU applicable in the context of the provision of investment services or under the conditions set out in Article 411-129 I, AMF General Regulation.

AMF Instruction

Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and reporting for French and foreign UCITS marketed in France - Article 40

Rule overview: The marketing of UCITS units or shares in the territory of the French Republic is subject to the provision of instruments of incorporation, rules or any other document intended to provide information to holders in French.

As an exception, these documents can be written in a language used in financial matter other than French if the marketing is addressed to professional investors and once the person who markets the units or shares will have ensured:

- 1° with the professional investor, that he / she has consented to receive the documents in that language;
- 2° with the non-professional investor, that he / she understands this language.

Information available to the public in France

AMF Instruction

Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and reporting for French and foreign UCITS marketed in France - Article 40

Rule overview: UCITS must provide the public with the French in principle (see above) version of the Key Investor Information Document and also ensure that compulsory investor information is available on the premises of the institutions authorised to take subscription and redemption orders.

Foreign management companies are required to inform shareholders or unitholders under the same conditions as those imposed by the domestic law of the country in which the UCITS is marketed.

Informing investors after they have made an investment

See point 6: Monitoring investor relations

3. PROVIDING INVESTMENT SERVICES WHEN MARKETING SHARES OR UNITS OF FOREIGN UCITS

Supply, when marketing shares or units of foreign UCITS, of investment services by an investment services provider authorised in France or in another Member State

Statutory provisions

Article L. 321-1, Monetary and Financial Code

Articles L. 533-11 to L. 533-13 and L. 533-14 to L. 533-20, Monetary and Financial Code (concerning investment services providers authorised in France or operating under the right of establishment in France²)

Regulatory provisions³

Article D. 321-1, Monetary and Financial Code

² Investment services providers authorised in another Member State operating in France under the freedom to provide investment services are subject to conduct of business rules from their country of origin resulting from the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

³ Without prejudice to the application of the provisions of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

Articles D. 533-15 to D. 533-15-2 and 1° and 2° of Article L. 533-24-1, Monetary and Financial Code (concerning investment services providers authorised in France or operating under the right of establishment in France)

Articles 313-18 *et seq* and 314-1 *et seq* (concerning investment services providers authorised in France or operating under the right of establishment in France and excluding provisions relating to portfolio management services) and 421-26, AMF General Regulation

AMF instruction, positions and recommendations

Instruction AMF DOC-2008-04 : Application of business conduct rules to marketing of units or shares in UCITS or AIFs by asset management companies, management companies or managers

Position-recommendation AMF DOC-2007-25: Q&A on the rules of conduct applicable to investment services providers

Position DOC-2018-04: Guidelines on MIFID II product governance requirements

Position DOC-2019-03: MIFID II suitability requirements

Rule overview: The AMF has noted that when financial instruments are marketed, the distributor generally provides at least one investment service, such as investment advice or order reception/transmission for third parties.

Accordingly investment services providers authorised in France or operating under the right of establishment, together with their tied agents if they have any, are required to comply with French conduct of business rules governing the supply of the investment service(s) concerned, notwithstanding the specific rules applicable to the marketing of Hong Kong Covered Funds hereinabove mentioned, where applicable⁴.

Use of a tied agent⁵

Rule overview: See the above measures applicable to investment services providers.

Use of a financial investment advisor⁶

Statutory provisions

Articles L. 541-8-1 to L. 541-9-1, Monetary and Financial Code

Regulatory provisions

Articles 325-3 to 325-17 and 325-32 , AMF General Regulation

AMF position-recommendation

Position-Recommendation AMF DOC-2006-23: Q&A on the regime applicable to financial investment advisors

Rule overview: A financial investment advisor may provide an investment advice service and receive a client's order for transmission purposes if, and only if, that order concerns one or more shares or units of collective investment schemes (listed exhaustively in Article L. 214-1 of the Monetary and Financial Code, i.e. "*undertakings for collective investment in transferable securities, securitisation funds, real-property investment partnerships, forestry-linked savings companies, real-property collective investment*

⁴ Foreign investment services providers operating in France under the freedom to provide services are subject to the conduct of business rules of their home state.

⁵ Within the meaning of Article 4(1)(25) of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments (MiFID). The regime applicable to tied agents is set forth in Articles L. 545-1 *et seq* of the Monetary and Financial Code.

⁶ Within the meaning of Article L.541-1 of the Monetary and Financial Code.

undertakings” and fixed capital investment companies) for which the financial investment advisor has previously provided an investment advice service to the same client.

4. REMUNERATION OF UCITS DISTRIBUTORS

Rebates of management fees or subscription/redemption fees

Regulatory provisions

Articles 411-129-1, 411-130 and 411-132, AMF General Regulation

Rule overview: Rebates of management fees or subscription/redemption fees are prohibited or regulated in accordance with the aforementioned provisions of the AMF General Regulation.

5. SPECIFIC PROVISIONS FOR SOME COLLECTIVE INVESTMENT SCHEMES

Marketing shares or units in complex collective investment schemes⁷

AMF position

AMF position 2010-05: Marketing of complex financial instruments

Rule overview: In particular this position reminds distributors of their obligations when choosing products to market to retail investors. It stresses that distributors sometimes do not meet their professional obligations when marketing particularly complex products covered specifically by the AMF position. The latter products are subject to “enhanced vigilance”.

Marketing shares or units in collective investment schemes offering a guarantee

AMF position

AMF position 2013-12: Requirement to offer a guarantee (of the formula and/or capital, as appropriate) for structured UCITS and AIFs, “guaranteed” UCITS and AIFs and structured debt securities issued by special purpose entities and marketed to the general public

Rule overview: The purpose of this position is to prevent the risk of mis-selling 'guaranteed' UCITS or AIFs, as well as structured debt securities presenting similar characteristics issued by special purpose entities, to the public. The AMF points out that if the guarantee of the formula result or of the capital is not provided by an authorised entity, there is a risk that retail clients may misunderstand the risks.

Admission to trading on a regulated market of shares or units in a UCITS

Regulatory provisions

Article D. 214-22-1, Monetary and Financial Code

Articles 411-133 and 411-134, AMF General Regulation

⁷ Note that the term “complex” should not be construed within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (MiFID).

UCITS with categories of units or shares reserved for a specific investor category

Regulatory provisions

Articles 411-22 and 411-129 II, AMF General Regulation

Rule overview: If a collective investment scheme or the sub-fund of a collective investment scheme has categories of units or shares reserved for a specific category of investor, as defined in the prospectus, the distributor must ensure that the investor fulfils the subscription requirements.

6. MONITORING INVESTOR RELATIONS

Informing investors after they have made an investment

AMF Instruction

Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and reporting for French and foreign UCITS marketed in France - Articles 18 to 23, 40 and annex XII

Rule overview: Certain changes that may occur during the life of a UCITS or a UCITS sub-fund must be brought to the attention of shareholders or unitholders. These changes and the arrangements for informing investors about them are described in the above instruction.