

Reminder of the regulations liable to apply to websites offering assistance in the investment decision-making process

The *Autorité des Marchés Financiers* and the *Autorité de Contrôle Prudentiel* would like to recall that some of the services proposed by websites offering assistance in the investment decision-making process may be deemed to constitute investment services, including:

- **Portfolio management services on behalf of third parties¹**, which means managing portfolios in accordance with mandates given by third parties on a discretionary, client-by-client basis where such portfolios include one or more financial instruments. It may be so when the service provided by a website consists of placing orders in the name of the users, on the basis of trading signals of which they choose the source, and on the basis of information they have previously provided, without them intervening.
- **Receiving and transmitting orders on behalf of third parties²**, which shall be understood as receiving orders in financial instruments and transmitting them to an investment services provider on behalf of a third party. It may be so when the website transmits orders submitted by the users relating to financial instruments
- **Investment advice³**, which means providing personal recommendations to a third party in respect of one or more transactions in financial instruments, either at his/her request or on the initiative of the firm providing the advice. It may be so when the website provides recommendations relating to financial instruments, beyond a mere presentation of facts or figures, and when these recommendations are presented as suitable for the recipient, or based on a consideration of the circumstances of that person.

Providers must be authorised as investment services providers in order to provide any of these services. Those persons operating in the capacity of a financial investment advisor or tied agent⁴ are also allowed to provide financial investment advice.

In order to be approved as an investment services provider:

- French companies must secure approval by the *Autorité de Contrôle Prudentiel*, after obtaining the opinion of the *Autorité des Marchés Financiers*⁵.
- Non-French providers having their registered office (or place of effective management) in the European Economic Area and wishing to establish a business relationship with one or more clients residing in France, including by contacting a French-resident client in any way with a view to providing an investment service, must have obtained prior authorisation in their home state and must apply for a European passport to supply these services in France under the freedom to provide services.
- If these providers want to set up a branch in France to offer their services, they must first be authorised in their home state and apply for a European passport to supply these investment services in France under the right of establishment.
- Other providers from outside the EEA that are licensed as credit institutions in the state where their registered office is located must be authorised by the ACP if they wish to carry on their business in France through a branch.

¹ Article D 321-1 4° of the Monetary and Financial Code

² Article D 321-1 1° of the Monetary and Financial Code

³ Article D 321-1 5° of the Monetary and Financial Code

⁴ A tied agent may also, for the account of an investment services provider approved for this purpose, receive and transmit orders on behalf of a third party

⁵ Where companies primarily wish to provide portfolio management on behalf of a third party, they must be approved as asset management companies by the AMF, pursuant to Article L 532-9 of the Monetary and Financial Code.

In order to qualify as an financial investment advisor (FIAs):

- Professionals must meet the requirements set forth in the regulations, and they must notably be able to prove, at any time, that they have an insurance policy covering them against the financial consequences of their professional civil liability in the event of a breach of their professional obligations.
- They must be registered as such with the French register of ORIAS (*Organisme pour la tenue du registre unique des intermédiaires en assurance, banque et finance*) and become a member of one of the six professional associations approved by the AMF. The list of approved associations is available on the AMF's website, in the Geco database: <http://www.amf-france.org/> under the heading "FIAs and direct marketers">"Registry of FIA/FIA Associations".

In order to be approved as a tied agent:

- Professionals must have entered into an agreement for this purpose with a unique investment services provider and be registered as such with the French register of ORIAS as of early 2013.

With the exception of public financial institutions such as the *Banque de France* which qualify for exemption to Article L. 531-2 of the Monetary and Financial code, no unauthorised person (investment services provider, financial investment advisor or tied agent) may provide investment services to third parties as a regular business activity.

Violation of this prohibition is subject to criminal prosecution. Pursuant to Articles L. 573-1 (natural persons) and L. 573-7 (legal persons) of the Monetary and Financial Code, providing investment services without authorisation shall be punished by imprisonment for three years and by a fine of 375,000 euros. The amount of the fine shall be multiplied by five (i.e. 1,875,000 euros) if the offence is committed by a moral person (Article 131-38 of the French Penal Code). With regard to financial investment advice, those persons who are not authorised as an investment services provider and who perform such activities without meeting the requirements set forth in Article L. 541-2 to L. 541-5 of the Monetary and Financial may be punished by imprisonment for five years and by a fine of 375,000 euros (article L. 573-9 of the Monetary and Financial Code). A tied agent which would operate as such without being registered with the ORIAS (as of early 2013) may be punished by imprisonment for two years and by a fine of 6,000 euros (Article L 546-4 I of the Monetary and Financial Code).

Lastly, some services provided by those websites offering assistance in the investment decision-making process aim to offer the public information recommending or suggesting an investment strategy. This is not an investment service. However, those websites, which do not operate as investment services providers, provide **independent investment research**⁶. The analysts who produce and disseminate it must comply with the transparency, independence and organisation requirements provided for in Articles 327-1 et seq of the AMF General Regulation.

As regards independent financial analysts:

- They are required to adhere to a professional association authorised by the AMF or to adopt a code of ethics.
- They must comply with transparency, independence and organisation requirements.
- Third parties which disseminate the results of the research produced by an independent investment analyst are also governed by specific rules, which require them to specify the sources for the research they disseminate.

⁶ Articles L 621-31 et seq of the Monetary and Financial Code and Articles 329-1 et seq of the AMF General Regulation provide for exemptions on those investment recommendations produced or disseminated in connection with journalistic activity, and the development and publication of such recommendations are governed by separate rules.