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Changes to the intermediation in miscellaneous assets system: amendment to the general regulation and publication of a new instruction (DOC-2017-06)

Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life (the "Sapin II" law) introduces a change in the system of intermediation in miscellaneous assets, as set out in Article 79. Consequently, the Autorité des marchés financiers (AMF) is amending some of the provisions in its General Regulation and publishing a new Instruction.

Prior control of all the offers with a view to better protection for savers

Wine, forests, photovoltaic panels, works of art or diamonds: there are numerous investment proposals highlighting the possibility of a financial return which are not based on financial instruments. These so-called atypical investments involve intermediation in miscellaneous assets and relate to two types of transactions:

- proposals in the form of advertising and direct marketing inviting third parties to subscribe to life annuities or to acquire titles to movable or immovable property where the acquirers do not manage the property thereof themselves or where the contract offers a buy-back or exchange option with revaluation of the capital invested ⁽¹⁾. These proposals (hereinafter "miscellaneous assets 1") are subject to ex ante control by the AMF;

- the other proposals (hereinafter "miscellaneous assets 2") concern the acquisition of titles to one or more properties and put forward the possibility of direct or indirect financial returns or a similar economic effect ⁽²⁾. Advertising for these proposals was currently being subject to ex post control by the AMF.

Article 79 of the Sapin II Law introduces ex ante control by the AMF on investment proposals regarding miscellaneous assets 2 according to the same procedures used for transactions in miscellaneous assets 1. The Sapin II Law also authorises the AMF to determine, in its General Regulation, the "minimum guarantees required for an investment intended for the general public" for all investment transactions in miscellaneous assets (either 1 or 2).

Consequently, the AMF is amending Title IV of Book IV of its General Regulation to specify these new provisions.

In addition to the amendments to its General Regulation, the AMF is publishing a new instruction ⁽³⁾, which specifies in particular the resources required from intermediaries in miscellaneous assets that fall under Article L. 550-1, I and II of the French Monetary and Financial Code, defines the procedures for registering the information documents to be filed with the AMF, and details the content of these documents.

This new system is now effective, and consequently no offer on miscellaneous assets can be advertised or directly marketed on without prior allocation by the AMF of a registration number on the information document for investors. The AMF recalls the existence of criminal sanctions provided for in the French Monetary and Financial Code in the event of non-compliance with this regulation.

In practice, this change in the system aims for better protection for savers, by guaranteeing consistency in terms of the competencies and integrity of the players, and the requirements and quality of information.

About the AMF

The AMF is an independent public authority responsible for ensuring that savings invested in financial products are protected, providing investors with adequate information and supervising the orderly operation of markets. Visit our website www.amf-france.org.

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Keywords

[SAVINGS PROTECTION](#)

[1] Art. L 550-1, I of the Monetary and Financial Code

[2] Art. L 550-1, II of the Monetary and Financial Code

[3] An instruction that supersedes the Commission des Opérations de Bourse instruction of 1 March 1986 (Instruction DOC-1986-01)

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