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Classes of units or shares in UCITS and AIFs: the AMF modifies its General Regulation and updates its policy

The Autorité des marchés financiers (AMF) is clarifying, for AIFs open to non-professional investors, the possibility of creating classes of units or shares implementing both currency risk hedging and hedging for another risk factor. The AMF is also specifying that only currency risk may be specifically hedged for a class of units or shares in a UCITS. Lastly, the rules applying to AIFs open to non-professional investors have been relaxed.

Clarification of the framework applicable to UCITS and AIFs open to non-professional investors

Subsequent to the publication in 2017 of ESMA Opinion 34-43-296, the AMF is clarifying the framework governing the creation of classes of units or shares with risk hedging for UCITS and AIFs open to non-professional investors:

- For UCITS: only currency risk may be specifically hedged for a class of units or shares and counterparty risk for the same issuer resulting from financial contracts must be assessed for each class of units or shares.
- For AIFs open to non-professional investors: a risk factor may be hedged by class of units or shares in addition to currency risk and the hedging strategy must not call into question the investment objective common to all the classes of units or shares. A list of

possible strategies is included in the appendix of AMF position/recommendation DOC-2011-05 (guide to the regulatory documents governing collective investment schemes).

The risk monitoring framework by class of units or shares does not apply to AIFs.

AMF position/recommendation DOC-2011-05 has been updated. Systems must be implemented by portfolio management companies of UCITS or AIFs open to non-professional investors with several classes of units or shares:

- A non-contagion principle (via strict rules on the nature of hedging, the introduction of accounting segregation and appropriate risk monitoring); and
- A principle of transparency.

The new policy serves to ensure continued fair treatment of all unitholders or shareholders, notably through the establishment of a stringent framework and the implementation of adapted risk monitoring.

The funds concerned by this update to the regulatory framework are AIFs open to non-professional investors, namely retail investment funds, funds of alternative funds, retail private equity investment funds, employee investment undertakings and French real estate mutual funds (OPCIs), as well as UCITS.

Clarification of the framework applicable to AIFs open to professional investors

Until now, AIFs open to professional investors were subject to the same constraints as AIFs open to non-professional investors. The policy has been updated to give managers more flexibility to create more innovative investment strategies in a class of units or shares. A professional fund may create classes of units or shares implementing not just different hedging strategies but also exposure strategies relative to a class of units or shares, with no restrictions as to the nature of the hedging or exposure, providing these last are clearly specified in the prospectus.

The funds concerned by this clarification are professional investment funds, professional real estate collective investment undertakings, professional private equity investment funds and specialised professional funds (including SLPs).

The list of modified General Regulation articles

The Order of 13 April 2018 on the approval of modifications to the AMF General Regulation was published in the Official Journal of the French Republic on 21 April 2018. The modified General Regulation articles are listed in the table below according to the type of fund concerned:

	UCITS	AIFs open to non-professional investors	Professional investment funds, professional specialised funds, professional private equity funds, and professional real estate funds
Modified General Regulation articles	411-22 and 411-83	422-23	423-1, 423-21, 423-39 and 423-12

Read more

- AMF position/recommendation DOC-2011-05: Guide to the regulatory documents governing collective investments schemes
- ESMA Opinion 34-43-296

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Legal information:

Head of publications: The Executive Director of AMF Communication Directorate. Contact: Communication Directorate – Autorité des marchés financiers 17 place de la Bourse – 75082 Paris cedex 02