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Side pocket fund: the AMF aligns its policy with the PACTE law

Further to the PACTE law, the AMF is updating its policy to take into account the impact of legislative and regulatory changes, including recent amendments to the AMF General Regulation, relating to side pockets.

Demergers under Articles L. 214-7-4, L. 214-8-7, L. 214-24-33, L. 214-24-41, L. 214-190-2-1 or L. 214-190-3-1 of the Monetary and Financial Code are intended to address exceptional situations affecting certain assets of collective investment undertakings (CIUs), where their disposal would not be in the interests of unitholders or shareholders. This mechanism consists in separating liquid assets from illiquid assets into two distinct CIUs.

Reminder of the old mechanism

The old system consisted in splitting and then liquidating the initial CIU by creating two new CIUs:

- a mirror CIU for holding liquid assets, to enable the management company to continue the normal management of the CIU;
- a side pocket in the form of a specialised professional fund for ring-fencing the illiquid assets. From the outset, the side pocket was managed on an extinctive basis, with the management company liquidating the assets as and when market conditions permitted, until it was completely extinguished.

Update to take the PACTE law into account

The update of the AMF policy takes the following into account:

- Law No. 2019-486 of 22 May 2019 on business growth and transformation (the PACTE law) has reversed the mechanism. Liquid assets are transferred to the new collective investment undertaking, which is no longer a specialised professional fund but a CIU of the same kind as the split CIU. Illiquid assets are kept in the split CIU, which becomes the side pocket fund;
- If the CIU is an AMF-authorized fund, the decree of 10 April 2020 approving amendments to the AMF General Regulation stipulates that the new CIU must be authorized as comparable CIU under the fast track process;
- Pursuant to the PACTE law, the split CIU, which has become the side pocket fund, is liquidated as soon as the liquid assets have been transferred to the new CIU.

In addition to the updates of the provisions concerned by Position-Recommendation DOC-2011-25, of Instruction DOC-2011-19 and Instruction DOC-2011-20, provisions on side pockets have been added to Instructions DOC-2011-21, DOC-2011-22 and DOC-2012-06.

Procedures for the authorization of comparable private equity funds have also been included in Instruction DOC-2011-22.

The updated documents are as follows:

- Instruction DOC-2011-19 - Authorisation processes, preparation of a KIID and a prospectus and periodic reporting for French and foreign UCITS marketed in France;
- Instruction DOC-2011-20 - Authorisation processes, preparation of a KIID and a prospectus and periodic reporting for retail investment funds, funds of alternative funds and professional retail investment funds
- Instruction DOC-2011-21 - Authorisation processes, preparation of a KIID and a prospectus, and reporting for employee investment undertakings;
- Instruction DOC-2011-22 - Authorisation processes, preparation of a KIID and rules, and periodic reporting for private equity funds;
- Instruction DOC-2012-06 - Procedures for making disclosures and introducing changes, preparation of a prospectus and reporting for specialised professional funds, professional

private equity funds and specialised financing vehicles;

- Position-recommendation DOC- 2011-25- A guide to the monitoring of collective investment undertakings;

Simplification of the procedure

For authorised UCITS and AIFs:

Under the new system, in addition to the declaration of the demerger to the AMF, management companies shall send the AMF a request for the authorisation of the new comparable UCITS or AIF and an authorisation request to liquidate the split UCITS or AIF. To avoid sending the AMF three separate forms, the procedure has been simplified by creating a single form (appended to the instructions) that groups together the declaration of the split, the request for the authorisation of the new comparable UCITS or FIA, and the authorisation request to start liquidation of the split UCITS or FIA.

For declared AIFs:

Likewise, a single form has been provided in the appendix of instruction DOC-2012-06. It includes the declaration of the split, the declaration of the new AIF and the declaration of the liquidation of the split AIF.

Prior contact with the AMF

The management company shall contact the AMF as early as possible before the launch of the demerger transaction to ensure maximum preparation for the declaration (and if necessary, authorisation) formalities, and where applicable, the process for keeping the ISIN code for the new CIU.

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