

AMF Position
Q&A on professional specialised investment funds – DOC-2005-14

Reference texts: Articles L. 214-154 to L. 214-158 of the Monetary and Financial Code

The Financial Security Act of 1 August 2003 created funds, at that time called "contractual funds" (*OPCVM contractuels*), in response to the demands of professionals who wanted vehicles exempt from the rules of ordinary law and intended for qualified and similarly knowledgeable investors. As part of the transposition of Directive 2011/61/EU, the AIFM Directive, this fund category was merged with a fund type then referred to as "contractual venture capital funds" (*FCPR contractuels*) to form a new category christened "professional specialised funds". Given the flexibility these funds offer, notably with respect to investments and commitments, certain management companies have repeatedly questioned the AMF regarding the relationship between the strategies being executed in France and the general rules that apply to these funds. This document aims to clarify the rules that apply to the management of professional specialised funds.

1. What due diligence must be performed for professional specialised funds investing 100% of their assets in a single foreign legal entity?

The conditions examined in paragraph 2.1 of position document no. 2012-11 – Guide to private equity funds and professional private equity funds, also apply to professional specialised funds investing 100% of their assets in a single foreign legal entity.

2. When a professional specialised fund invests in funds not authorised for marketing in France, can it invest in funds that do not meet the criteria set out in Article 422-95 of the AMF General Regulation?

Professional specialised funds are not subject to the provisions of Article 422-95 of the AMF General Regulation, because they are expressly exempt by law¹.

However, management companies must take the following factors into account:

- professional specialised funds may only invest in assets that meet the criteria set out in Article L. 214-154 of the Monetary and Financial Code. In every instance, it is the management company's responsibility to verify the legality of the vehicles in which it may invest;
- failure to respect the criteria set out in Article 422-95 of the AMF General Regulation may increase the risks related to investing in such a fund and therefore require an adjustment to the management company's resources and procedures;
- the professional specialised fund's prospectus must be modified to reflect this. It must notably list the criteria used to select alternative funds not authorised for marketing in France and their impact on the professional specialised fund's risk profile.

As a reminder, the selection of a foreign fund requires the AMF to approve an additional form (see instruction no. 2008-03).

3. May a professional specialised fund trade (i) a futures contract whose underlying asset is a foreign UCITS, AIF or other investment fund other than a closed-end fund, as listed in Article

¹ Article L. 214-157 I, alinéa 3 du code monétaire et financier : « Par dérogation aux articles L. 214-24-55 et L. 214-24-56, le règlement ou les statuts du fonds professionnel spécialisé fixent les règles d'investissement et d'engagement. »



L. 214-1-1 of the Monetary and Financial Code, that is unauthorised for marketing in France, or (ii) a “climate derivative”?

The specific details of financial contracts may require management companies to adapt their resources and procedures, and if need be, to update their programme of activity. Adjustments may be necessary with respect to the methods used to establish the value of these products and to the risk control mechanism. The management company must be able to establish a precise and unbiased value for each of its assets and off-balance sheet items, to measure the risks associated with their positions and calculate how each position contributes to the overall risk profile of the professional specialised fund.

4. Does the use of complex derivative instruments require a specific form in addition to the programme of activity?

The use of complex derivative instruments (or forward financial instruments), including assets that incorporate derivatives, requires AMF approval of a specific form accompanying the asset management company's programme of activity.