

Authorisation application file for marketing in France of third country AIFs or AIFs managed by a manager established in a third country

This document is Annex 3 to AMF Instruction - DOC-2014-03 – Procedures for pre-marketing or marketing units or shares of AIFs

Business name of the asset management company, management company or manager: ……………………..

Contact details: ……………………

Asset management company (or self-managed AIF) authorised in France, please specify the authorisation number: ……………..

Management company (or self-managed AIF) authorised in another European Union Member State under Directive 2011/61/EU, please specify the State and authority that issued the authorisation: ……………………………..

Manager established in a third country, please specify the country: ……………………

Name of the senior manager or the person specifically empowered for the purposes of this application: ………………………………

Contact e-mail address: ………………………………

Purpose of the file:

Authorisation application for marketing to professional clients

Authorisation application for marketing to retail clients (in this case, you must attach evidence of compliance with the conditions provided by Article 421-13 of the AMF General Regulation; in the absence of such evidence, the file is inadmissible)

If the application concerns only marketing to professional clients, specify in a document attached to the file any arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the asset management company, management company or manager relies on activities of independent entities to provide investment services for the AIF

Name of the AIF concerned: ………………………………

Legal form of the AIF:

Fund

Company

Other (please specify): ………………..

AIF established in France

AIF established in another European Union Member State, please specify the Member State: ……………

AIF established in a third country, please specify the country: ………………

Doers the AIF have compartments?

yes

no

If yes, name of the compartments subject to the authorisation application:

……………………………………………..

Identity and contact details of the centralising correspondent referred to in Article 421-27 of the AMF General Regulation (not applicable if the AIF is managed by an asset management company authorised in France): ………………………………………………

The asset management company, management company or manager is applying for authorisation to market the units or shares of the abovementioned AIF in France.

For a French asset management company or a management company established in another European Union Member State

The asset management company or management company authorised under Directive 2011/61/EU of 8 June 2011, hereby certifies that:

a) it complies with the laws and regulations applicable to management companies under Directive 2011/61/EU of 8 June 2011 for the management of the said AIF (except for the full regime of the depositary – see b) below), in particular Article 22 of the said directive on the annual report

b) that the missions referred to in Article L. 214-24-8 of the Monetary and Financial Code are carried out by the following entity or entities (business name and contact details): …………………

For a manager established in a third country who manages a third country AIF and who wishes to market this AIF to professional clients and, where applicable, retail clients

a) The manager certifies and provides evidence of compliance with the laws and regulations applicable to management companies under Directive 2011/61/EU of 8 June 2011 for the management of the said AIF (except for the full regime of the depositary – see b) below), in particular the following points for which the manager must attach a document evidencing compliance with each of the points:

**Sufficient capital and own funds** (Articles 8 1 b. and 9 of Directive 2011/61/EU and Articles 12 to 15 of Delegated Regulation (EU) n° 231/2013)

**Good repute and experience of the persons who effectively conduct the management business** (specify their identity) (Article 8 1 c. of Directive 2011/61/EU)

**Shareholders or members of the manager that have qualifying holdings ensuring sound and prudent management of the manager** (Article 8 1 d. of Directive 2011/61/EU)

**Head office and registered office of the manager are located in the same State** (Article 8 1 e. of Directive 2011/61/EU)

**Operating conditions**, notably:

\* Risk management (Article 15 of Directive 2011/61/EU and Articles 38 to 45 of Delegated Regulation (EU) n° 231/2013)

\* Liquidity management for open-ended AIFs (Article 16 of Directive 2011/61/EU and Articles 46 to 49 of Delegated Regulation (EU) n° 231/2013)

\* Delegation of management functions (Article 20 of Directive 2011/61/EU and Articles 75 to 81 of Delegated Regulation (EU) n° 231/2013)

\* Investment in securitisation positions (Article 17 of Directive 2011/61/EU and Articles 50 to 56 of Delegated Regulation (EU) n° 231/2013)

\* Valuation (Article 19 of Directive 2011/61/EU and Articles 67 to 74 of Delegated Regulation (EU) n° 231/2013)

\* Remuneration (Article 13 and Annex II of Directive 2011/61/EU and AMF position n° 2013-11 on remuneration policies applicable to managers of alternative investment funds)

**Transparency requirements**, notably:

\* Annual report (Article 22 of Directive 2011/61/EU and Articles 103 to 107 of Delegated Regulation (EU) n° 231/2013)

\* Disclosure to investors (Article 23 of Directive 2011/61/EU and Articles 108 to 109 of Delegated Regulation (EU) n° 231/2013)

b) The manager certifies that the missions referred to in Article L. 214-24-8 of the Monetary and Financial Code are carried out by the following entity or entities (business name and contact details):

…………………

For a manager established in a third country who manages a third country AIF for marketing to retail clients only

The manager certifies and provides evidence of compliance with the requirements provided for by the mutual recognition agreement concluded between the AMF and the competent authority.

Items to be attached to the file for each AIF (you are reminded that any incomplete file shall be inadmissible):

The AIF rules or instruments of incorporation

A description of, or any information on, the AIF available to investors (prospectus, KIID, etc).

Where no application is being made for marketing to retail clients: information about any arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the asset management company, management company or manager relies on activities of independent entities to provide investment services for the AIF

Where an application is being made for marketing to retail clients: evidence of compliance with the conditions provided by Article 421-13 of the AMF General Regulation, notably the facilities made available in order to perform the tasks listed in the said article.

Except for a third country AIF managed by a manager established in a third country for marketing to retail clients only, any additional information referred to in paragraphs 2 and 3 of Article L. 214-24-19 of the Monetary and Financial Code for each AIF the asset management company, management company or manager intends to market; if any of this information is already included in any documents submitted in parallel to the AMF (the prospectus, for example), the asset management company, management company or manager shall indicate where this information can be found in the documents transmitted by filling out the table below:

|  |  |
| --- | --- |
| **Information** | **Specify where to find the information** |
| a) a description of the investment strategy and objectives of the AIF, information on where any master AIF within the meaning of the AIFM Directive[[1]](#footnote-1) is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the asset management company, management company or manager is entitled to employ on behalf of the AIF; |  |
| b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both; |  |
| c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the AIF is established; |  |
| d) the identity of the asset management company (or the management company or the manager), of the entity or entities carryiong out the missions referred to in Article L. 214-24-8 of the Monetary and Financial Code, and of the statutory auditor of the accounts of the AIF and of any other service providers and a description of their duties and the investors’ rights; |  |
| e) a description of how the asset management company, management company or manager is complying with the requirements of Article 9(7) of Directive 2011/61/EU;[[2]](#footnote-2) |  |
| f) a description of any management function delegated by the asset management company, management company or manager and of any safe-keeping function delegated by the entity or entities carrying out the function referred to in Article L. 214-24-8 of the Monetary and Financial Ciode, the identification of the delegate and any conflicts of interest that may arise from such delegations; |  |
| g) a description of the AIF’s valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets; |  |
| h) a description of the AIF’s liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors; |  |
| i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors; |  |
| j) a description of how the management company ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or asset management company (or management company or manager); |  |
| k) the latest annual report; |  |
| l) the procedure and conditions for the issue and sale of units or shares; |  |
| m) the latest net asset value of the AIF or the latest market price of the AIF unit or share; |  |
| n) where available, the historical performance of the AIF; |  |
| o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist; |  |
| p) description of how and when the information required under paragraphs 4 and 5 of Article 23 of the AIFM Directive[[3]](#footnote-3) will be disclosed. |  |

For a third country AIF managed by a manager established in a third country for marketing to retail clients only, any information required under the mutual recognition agreement specified under Article 421-13 of the AMF General Regulation.

In my capacity as senior manager of the asset management company, management company or manager (or as a person specifically empowered for the purposes of the present), I hereby certify that the information provided above is binding upon me, true and fair.

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On

1. *This definition is transposed into French law in Article L. 214-24 IV of the Monetary and Financial Code.* [↑](#footnote-ref-1)
2. *Transposed into French law in Article 317-2, IV of the AMF General Regulation.* [↑](#footnote-ref-2)
3. *Transposed in Article 421-34, IV and V of the AMF General Regulation.* [↑](#footnote-ref-3)