

AMF public consultation on the provision of future performance simulations to investors

1. Consultation objectives and practicalities

1.1 Objectives

As part of its focus on technological innovation, and following the establishment of its 'Fintech, Innovation and Competitiveness' division, the AMF has noted the emergence of wholly digital services offered by traditional and non-traditional professionals that involve the marketing of savings solutions (financial instruments, management mandates, etc.) to potential investors.

In some cases, financial professionals compensate for the impossibility of establishing personal contact with each client or make a conscious decision to adopt a 'pure digital' business model via a technological, educational tool that enables prospects to draw up their own financial positions and undertake a number of simulations. This involves prospects filling out standardised questionnaires online in which they are usually asked to set an initial investment amount and the amount they wish to invest per month after that, choose a risk profile and define the investment value they would like to obtain to a given horizon. The tool's algorithms then generate projections for the client's investment value under various scenarios, ranging from the most pessimistic to the most optimistic. These simulations are made available before advice is given or the investment service is provided.

Whether for management services or advice, this new marketing practice for savings solutions appears to be in use by traditional as well as non-traditional actors.

In a bid to assist financial professionals in France while ensuring saver protection and proper investor information, the AMF is launching a public consultation on financial professionals' use of tools that simulate future performance when they market savings solutions, irrespective of whether they are directly accessible online or made available to advisers in branch networks. The AMF's aim is to modify, if necessary, its policy in the light of current practice.

This consultation exercise is open to all. The AMF regularly consults with professionals and savers in this way.

The consultation document contains four proposals. Participants are invited to respond and submit comments that can be fed into AMF thinking.

1.2 Who is this consultation intended for?

This consultation is particularly aimed at:

- individual investors and their representatives,
- portfolio management companies,
- distributors (financial investment advisers, banking networks, etc.),
- companies developing 'FinTech' and/or 'RegTech' services,
- crowdfunding advisers,
- professional associations,
- consumer associations,
- law firms, especially those working in the financial sector.

1.3 Regulations under review

Articles 314-10 to 314-17, 325-5 and 325-36 of the AMF General Regulation.

1.4 Response procedure and deadline

This consultation will end on **Monday 20 January 2017**. Participants are invited to send their responses and comments to the following address: directiondelacommunication@amf-france.org

The responses, comments and proposals generated during this consultation will enable the AMF to consider retaining or amending its regulations – “regulations under review” in this document – and to develop new elements of its policy.

In the light of responses received, and if it deems it necessary, the AMF will propose an update to its policy and submit new good practice to the professionals concerned.

2. Background to the consultation

Their educational value may be commendable, but it seems that some of the future performance simulation tools that professionals offer at the moment are based on unrealistic hypotheses. It follows that the information presented on their websites can sometimes be misleading and over-optimistic.

In the light of current market conditions, the occasionally unrealistic nature of certain professionals’ projections has made it necessary for the AMF to review and strengthen regulations applicable to the marketing of savings solutions, while improving their consistency and uniformity.

The dissemination of better information would also reduce the risk that potential clients misunderstand the services offered by these professionals and subject all professionals to a consistent regime.

Against this backdrop, the AMF is reviewing methods that could be used to structure the information professionals provide in the light of applicable regulations. Alternatively, it may specify exactly how these tools should be used.

2.1 Applicable regulations

Regulations applicable to investment services providers¹

According to Article 314-10 of the AMF General Regulation, investment service providers are required to disseminate information that is fair, clear and not misleading. Similarly, paragraph I of Article L.533-12 of the Monetary and Financial Code states that “*All the information, including communications of a promotional nature, that is sent to clients, including potential clients, by an investment service provider, shall have a content which is accurate, clear and not misleading.*”

Furthermore, when they provide information intended for their clients, investment service providers are required to respect a balance between risk and reward as defined in Article 314-11 of the AMF General Regulation:

“The information shall include the name of the investment services provider.

It shall be accurate and in particular shall not emphasise any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks.

It shall be sufficient for, and presented in a way that is likely to be understood by, an average investor in the category at which it addressed or by which it is likely to be received.

It shall not disguise, diminish or obscure important items, statements or warnings.”

¹ Excluding asset management companies authorised under the AIFM directive and covered by Title I *bis*, Book III of the AMF General Regulation.

Article 314-15 of the AMF General Regulation also applies to investment service providers and clarifies what is meant by fair, clear and not misleading information when the service provider disseminates projections of future performance:

“Where the information contains information on future performance, the following conditions shall be satisfied:

- 1. The information must not be based on or refer to simulated past performance.*
- 2. It must be based on reasonable assumptions supported by objective data.*
- 3. Where the information is based on gross performance, the effect of commissions, fees or other charges must be disclosed.*
- 4. The information must contain a prominent warning that such forecasts are not a reliable indicator of future performance.”*

These provisions result from the transposition of Article 27 of Directive 2006/73/EC, which contains implementation measures for Directive 2004/39/EC of the European Parliament and Council (“MiFID I”) in respect of investment firms’ organisation and operating conditions and defines certain terms in it. These provisions are also transposed in Article 44 of the delegated regulation complement Directive 2014/65/EU (“MiFID II”).

Note that the reference to past performance in paragraph 4 of Article 314-15 of the AMF General Regulation stems from a transposition error. It should read “[...] that simulated performances [...]”.²

Regulations applicable to asset management companies authorised under the AIFM directive

Asset management companies subject to Title I *bis* of Book III of the AMF General Regulation and authorised under the AIFM directive are covered by the same provisions as those applicable to investment service providers under Article 319-5 of the AMF General Regulation, which states that “*Asset management companies that market units or shares in AIFs shall comply with the provisions relating to client information provided by Section 3 of Chapter IV of Title I of this Book.*”

When they offer investment services, these firms are subject to Articles 314-10 *et seq.* of the AMF General Regulation.

Regulations applicable to crowdfunding investment advisers

The provisions of Articles 314-10 to 314-17 of the AMF General Regulation applicable to investment service providers are also applicable to crowdfunding investment advisers by virtue of Article 325-36, which states that “*All information, including marketing information, issued by a crowdfunding investment adviser shall be fair, clear and not misleading. It shall be presented in a balanced manner.*”

Regulations applicable to financial investment advisers

While the principle of fair, clear and not misleading information is laid down in Article 325-5 of the AMF General Regulation, the rules applicable to investment service providers that incorporate this principle (Articles 314-10 to 314-17 of the same regulation):

- have not been extended to financial investment advisers, in contrast with crowdfunding investment advisers,
- but apply to financial investment advisers that are members of four associations via their codes of good conduct. Associations of financial investment advisers have integrated these provisions in their AMF-approved codes as professional rules. The AMF can penalise breaches of these rules.

² Article 314-14 of the AMF General Regulation deals with information on simulations of past performance.

The upshot is that a potential asymmetry of treatment exists between different professionals using future performance simulation tools in respect of the dissemination of fair, clear and not misleading information about simulated performance.

2.2 Proposals for consultation

2.2.1 Question 1: Standardisation of rules and good practice for all professionals

In the circumstances, it now appears opportune to clarify the rules applicable to all professionals disseminating performance simulators, whether they be investment service providers, asset management companies, financial investment advisers or crowdfunding investment providers that stem from the requirements of information that is fair, clear and not misleading and that are common to all.

In practice, this means extending Articles 314-10 *et seq.* of the AMF General Regulation to financial investment advisers, in the same way as provided for crowdfunding investor advisers.

This would be possible on the basis of Article L.541-8-1 of the Monetary and Financial Code³, which lays down good conduct rules for financial investment advisers; these are identical in these respects to those applicable to crowdfunding investment advisers (Article L.547-9 of the Monetary and Financial Code).

Q1: Do you agree with the standardisation of the rules and good practice proposed in point A of the Annex?

2.2.2 Question 2: Proposed insertion of a standardised framework

One way of dealing with future performance simulation tools would be to standardise the information that is disseminated.

In order to minimise the risk of poor comprehension and to protect both professionals and clients during the marketing process, firms wishing to use a future performance simulation tool in the marketing of products or provision of services in France would be recommended to require the client to confirm that a 'health warning' message has been read before charts are displayed. Moreover, the message could appear in bold type and in a legible size in a box on the same screen as the chart. A message that could not be seen unless the user scrolled down would not be considered compliant, for example.

A standard message of the following form could be recommended:

The illustration shown is not a forecast of the future performance of your investments. This chart is based on estimates specific to [professional's name] and has educational value to illustrate the way your investment works.

The value of your investment could diverge significantly from the results shown. The most unfavourable scenario shown is not a reliable measure of your maximum possible loss, which could be the entirety of capital invested⁴.

³ Financial investment advisers must:

1. Be loyal and act fairly in the best interest of their clients;
2. Carry out their business, within the limits authorised by their status, with the competence, care and diligence that the best interests of their clients demands, in order to offer services adapted and proportionate to their needs and objectives;
3. Have the resources and procedures required to carry out their activities properly and deploy such resources and procedures with a view to efficiency;
4. Enquire of their clients or potential clients, before formulating the advice described in [Article L. 541-1](#), their knowledge and experience concerning investment, as well as their financial situation and investment objectives, so that they can recommend transactions, instruments and services adapted to their situation. When clients or potential clients fail to communicate the information required, financial investment advisers shall abstain from recommending the transactions, instruments and services in question;
5. Communicate to clients in an appropriate manner the legal nature and scope of possible relationships with institutions promoting the products mentioned in paragraph 1 of [Article L. 341-3](#), information relevant to these clients' decisions and information concerning their remuneration, notably fees for their services.

These rules of good conduct are provided for in the AMF General Regulation.

By remaining on this site, you confirm that you acknowledge this warning, understand it and accept its content.

Q2: Do you agree with this recommendation, publicised in an *ad hoc* policy document in the form shown in point B1 of the Annex?

2.2.3 Question 3: Publicising good and bad practice

In order to assist professionals in setting up and disseminating performance simulators when they market financial instruments or supply investment services in France, good and bad practices could be publicised in the form of recommendations.

Examples could be as follows:

The AMF recommends that the following good and bad practices should be taken into account:

- Performance simulations are based on realistic market hypotheses;
- The volatility hypotheses used in a future performance simulation chart are consistent with the simulated investment horizon;
- A simulation takes account of the investment horizon and is based on reasonable market hypotheses consistent with that horizon (interest rates, volatility, inflation etc.) founded in objective factors;
- A simulation based on long-term interest rate hypotheses cannot be used to simulate the performance of investments in short-term interest rates. Similarly, it is difficult to simulate a 5-year yield on the basis of 10-year interest rates.

Q3: Do you agree with this recommendation, publicised in an *ad hoc* policy document in the form shown in point B2 of the Annex?

⁴ Except guaranteed products.

Annex: Regulations put to consultation

A – Subjecting all professionals to the same regulation – Proposal to extend Articles 314-10 to 314-17 of the AMF General Regulation to financial investment advisers

Article 325-5 of the AMF General Regulation

All information, including advertisements, sent by a financial investment adviser shall be fair, clear and not misleading.

The content of information must comply with Articles 314-10 to 314-17.

Proposal to amend Article 314-15 of the AMF General Regulation

Article 314-15 of the AMF General Regulation

Where the information contains information on future performance, the following conditions shall be satisfied:

1. The information must not be based on or refer to simulated past performance.
2. It must be based on reasonable assumptions supported by objective data.
3. Where the information is based on gross performance, the effect of commissions, fees or other charges must be disclosed.
4. The information must contain a prominent warning that such forecasts are not a reliable indicator of future performance.

Article 314-14 relating to past performances would not be changed.

B – Drafting an *ad hoc* policy document

AMF Recommendation

Simulating future performance – DOC-2016-XX

Reference documents: Article L. 533-12 of the Monetary and Financial Code, Articles 314-10 to 314-173, 325-5 and 325-36 of the AMF General Regulation.

As part of its focus on technological innovation, the AMF has noted the emergence of wholly digital services offered by professionals to their investors.

We have seen in some cases that these professionals provide their investors and prospects with technological tools that enable them to draw up their own financial positions. This involves prospects filling out standardised questionnaires online in which they are usually asked to set an initial investment amount and the amount they wish to invest per month after that, choose a risk profile or investment vehicle and define the investment value they would like to obtain to a given horizon. The tool's algorithms then generate projections for the client's investment value under various scenarios, ranging from the most pessimistic to the most optimistic.

The AMF intends that this document reminds professionals investment, whether they be service providers, including asset management companies, financial investment advisers or crowdfunding investment providers, of what is required by the regulations and how they should be interpreted.

This document is also intended to provide recommendations for implementation.

1. Investor information on future performance simulators

Recommendation

In order to minimise the risk of poor comprehension, firms wishing to use a future performance simulation tool would be recommended to require the client to confirm that a 'health warning' message has been read before charts are displayed.

It is recommended to display the message below legibly, on the same screen as the chart and in a box in bold in visible size.

The illustration shown is not a forecast of the future performance of your investments. This chart is based on estimates specific to [professional's name] and has educational value to illustrate the way your investment works.

The value of your investment could diverge significantly from the results shown. The most unfavourable scenario shown is not a reliable measure of your maximum possible loss, which could be the entirety of capital invested⁵.

The most favourable scenario does not constitute the exact yield on your portfolio. Performance could diverge from this curve, upwards or downwards.

By remaining on this site, you confirm that you acknowledge this warning, understand it and accept its content.

It is recommended that the message should not be visible only after scrolling the page down.

2. Technical aspects to designing future performance simulations

It seems that some future performance simulation tools are based on unrealistic hypotheses that are liable to the dissemination of potentially misleading and over-optimistic information.

Cases have been observed in which professionals communicate on a highly unfavourable scenario for which an investment constituted of money market assets is illustrated with manifestly disproportionate annual performance or by recourse to others using inappropriate short-term discount rates.

Recommendation

The AMF recommends that the following good and bad practices should be taken into account:

- Performance simulations are based on realistic market hypotheses;
- The volatility hypotheses used in a future performance simulation chart are consistent with the simulated investment horizon;
- A simulation takes account of the investment horizon and is based on reasonable market hypotheses consistent with that horizon (interest rates, volatility, inflation etc.) founded in objective factors;
- Given that a simulation based on long-term interest rate hypotheses must be consistent with future performance simulations, a 5-year yield can be simulated only on the basis of 5-year interest rates and not on the basis of interest rates to shorter or longer maturities.

⁵ Except for guaranteed products.