



Preparation of bond prospectuses and approval procedures

Update

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This guide incorporates the full text of AMF position 2010-04 of 15 October 2010.

References

European Commission Regulation No 809/2004 and the associated implementing instruments specify the content of prospectuses. These documents are available on the AMF website at www.amf-france.org under Texts



In order to issue bond securities or to have such securities listed, issuers must prepare a prospectus, which needs to receive AMF approval. Issuers may prepare either:

- a standalone prospectus, to be prepared for each listing application; or
- a base prospectus, to be prepared annually and supplemented with a document setting out the final terms of the issue, which must be filed with the AMF whenever a new series of securities is admitted.

The approval procedures have been simplified for both options, particularly in terms of language requirements and review times, exemplifying the AMF's determination to adjust the way it works to suit the needs of the bond market.

Issuers of bonds whose denomination per unit is less than €50,000 may, in particular⁽¹⁾, refer to the following annexes of the European regulation:

- Annex IV, which specifies minimum disclosure requirements for the debt and derivative securities registration document. If issuers already have a registration document, this schedule is in principle merely used to prepare a cross-reference table that refers to the relevant sections of the registration document; and
- Annex V, which stipulates the minimum disclosure requirements for the securities note.

Bonds whose denomination per unit is €50,000 or more are subject to reduced disclosure requirements. The following apply:

- Annex IX, which sets out the minimum disclosure requirements for the debt and derivative securities registration document; and
- Annex XIII, which stipulates the minimum disclosure requirements for the securities note.

A summary prospectus is not required.

⁽¹⁾ There are other annexes, particularly for regular bond issuers such as banks.



Does the AMF impose additional requirements over and above those contained in the Prospectus Directive?

No. The same requirements apply to all bond issues in Europe.

Furthermore, the completion letter requirement has been lifted for all bond issues, illustrating the AMF's determination to align itself with European practices⁽²⁾.



What about base prospectuses for EMTN programmes operated by credit institutions?

POSITION

The base prospectuses for EMTN programmes operated by banks seeking to list their debt securities in France may be approved by the AMF. The information set forth in the prospectus, notably about the different categories of underlyings, must be stated precisely by the issuer so that their descriptions and the associated risks are made clear in both the summary and the body of the prospectus.

In parallel, the AMF will continue to analyse the marketing materials of EMTNs sold to the public in France, especially complex EMTNs. For this it will refer to the best practice guide issued in early June 2010 and to its position on complex financial instrument marketing published in early October 2010. Note that the procedure for reviewing marketing materials submitted to the AMF prior to distribution⁽³⁾ applies to debt securities with AMF-approved prospectuses and also to those whose prospectuses are approved by a foreign regulator then passported into France to be marketed.



In what way is the base prospectus different from the standalone prospectus?

The base prospectus and the standalone prospectus both contain a section with details about the issuer, including information about its business, risk, financial situation and earnings, as well as a section on the bond securities. All this information must be clear and understandable.

If the issuer has already prepared a registration document, this may be incorporated by reference into the prospectus (base or standalone) to satisfy the requirement to provide information on the company. This has considerably streamlined the content of the prospectus.

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⁽²⁾ Articles 212-14 and 212-15 of the AMF General Regulation.

⁽³⁾ Article 212-28 of the AMF General Regulation.

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The base prospectus is used, among other things, as the basis for annual Euro Medium Term Note (EMTN) issuance programmes. Once a prospectus has been approved, the AMF's review of the file is complete. The issuer then decides on the final terms, including the details of the individual issue (rate, number of securities issued, timetable, etc.), and simply files these with the AMF, which does not carry out a review in the case of ordinary listings.

This approach:

- gives issuers more flexibility when choosing the timetable for their issues;
- minimises the time between the decision to issue and actual listing of securities.

The difference between the base prospectus and the standalone prospectus lies in the details provided about the securities. The standalone prospectus contains comprehensive quantitative and legal information about the terms of the issue, as compared with the more general information⁽⁴⁾ provided by the base prospectus.



Does the listing prospectus have to be prepared in French?

No. French does not have to be used when listing bond securities.



In what cases is the issuer entitled to use the French term "obligation"?

POSITION

In prospectuses relating to the issuance or listing of complex debt securities, the AMF accepts the use of the term "*obligation*" (bond) in the French summary.

In the French marketing materials used by issuers and/or distributors to market complex debt securities without a capital guarantee at maturity, the term "*obligation*" may not be used, even with a stipulation that the principal is not guaranteed (e.g. "*non garantie en capital à l'échéance*"). The term "*titre de créance*" (debt security) or "*instrument financier*" (financial instrument) should be used instead. In this way, the investor can be in no doubt about the risk of principal loss.

However, if a commercial document such as a brochure contains a French term sheet or a section setting out the main financial characteristics, the term "*obligation*" can be used in the heading that describes the legal form of the instrument, provide that the issuer clarifies the instrument's precise legal status.

⁽⁴⁾ The description of securities chiefly comprises *pro forma* final terms setting out the sections that will be completed for each issue.



Can the English⁽⁵⁾ registration document be incorporated by reference into a bond prospectus?

The AMF amended its General Regulation⁽⁶⁾ in the first half of 2010 to allow issuers having filed or registered a registration document in French to file or register the same document in a language customary in the sphere of finance, with a view to incorporating the latter document by reference into a bond prospectus.

In this case, issuers are required to provide the AMF with a certification that the English document is a faithful and accurate translation of the French version.

Note that the AMF also accepts:

- a prospectus drafted entirely in English and specifying that a free English translation of the registration document is available on the issuer's website or upon request.
- incorporation by reference of a French-language document into an English-language prospectus (e.g. incorporation of the registration document into the base prospectus for an EMTN programme). The European directive does not rule out the possibility of incorporation by reference of documents written in a language other than that of the prospectus, provided that, under a passport, the prospectus (including the summary) is available in a language accepted by the host country.

POSITION



Does the AMF demand a black-out period prior to approval of a bond prospectus?

No, the AMF imposes no such demands.

It is up to the issuer to decide whether to impose a blackout period depending on the materiality of the information it intends to publish and the impact of that information on the market and the securities for which it is seeking a listing.

In practice, issuers consider the release of financial data to be a material disclosure that could affect the market and the securities for which they are seeking a listing.

⁽⁵⁾ In this guide, “English” refers to a language that is customary in the sphere of finance.

⁽⁶⁾ Article 212-13 of the AMF General Regulation and Instruction 2005-11 of 13 December 2005, as amended.



What is the regulatory deadline for reviewing and approving a prospectus?

The deadline provided for in the Prospectus Directive, which has been transposed into the AMF General Regulation, is ten working days.

In general, whenever a draft standalone or base prospectus is submitted, the AMF will send an acknowledgement of receipt to the issuer if the file is complete. It will then issue its decision on whether to approve the prospectus within ten days of issuing the acknowledgement of receipt.

The deadline is reduced to five working days for issuers that have already provided complete information by previously drafting a registration document and registering or filing it with the AMF.



How does an issuer qualify for a shorter deadline?

In practice, and provided that the issuer makes contact ahead of time with the AMF, review times can be shortened even further in the case of routine issues⁽⁷⁾ by regular issuers that have provided up-to-date information (registration document or recent prospectus).



When is a summary required?

A summary is required only if the application covers the admission to trading on a regulated market of debt securities having a denomination of less than €50,000.

The summary shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities.

⁽⁷⁾ Primarily ordinary bond issues and/or listings that correspond to standard refinancing transactions.



POSITION

When is a supplement required?

Every significant new factor that is capable of affecting the assessment of the securities and that arises between the time when the prospectus is approved and the time when trading on a regulated market begins shall be mentioned by the issuer in a supplement to the prospectus⁽⁸⁾.

For example, an issuer must determine whether it needs to publish a supplement containing quarterly information.

In practice, issuers prepare supplements when they publish their annual or interim earnings.

Furthermore, if the issuer publishes a registration document, the AMF accepts that its interim financial statements, published as a half-yearly financial report, can be incorporated directly by reference into the prospectus without automatically updating the registration document.



How long is a bond prospectus valid for?

A bond prospectus is valid for a maximum of 12 months. Accordingly, if the issuer has regular refinancing needs, it should renew the base prospectus for its EMTN programme as promptly as possible.



Do listed securities have to be governed by French law and be denominated in euros?

The AMF imposes no governing law requirements on bonds for which ordinary admission to trading on a regulated market is requested, nor does it impose requirements in terms of the currency of issuance.

As an example, bonds governed by the laws of Germany, the UK and other jurisdictions are currently listed on the Paris Stock Exchange.

⁽⁸⁾ Article 16 of the Prospectus Directive (Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003).



Are dual listings allowed?

Multiple listings do not pose a problem.

A prospectus approved in Paris may receive an approval certificate, or “passport”. This is a straightforward and virtually automatic procedure for issuers, which allows them to have their securities listed on several exchanges, as they see fit.

In practice, the AMF can issue the passport promptly and free of charge if the issuer applies for it⁽⁹⁾ when filing the draft prospectus. The AMF then forwards the passport to the regulators in the countries where the issuer wishes to use its prospectus.

Naturally, a passport may be requested at any time. But the AMF stresses that if the request is made early on, the issuer has time to organise the translation of the summaries into the languages of the countries in question.



Can the issuer choose the listing segment?

The issuer is free to choose which segment the bonds are to be listed on, e.g. the professional segment.



Do bond issues have to receive a financial rating from a rating agency?

The AMF General Regulation does not require financial ratings for issues of debt securities, including when these securities are placed with retail investors.

The prospectus should simply and clearly mention the issue's rating or lack of a rating.

⁽⁹⁾ Depending on the country, it may be necessary to translate the summaries as well as the documents incorporated by reference that are required by certain regulators.



Useful information

Are there specific arrangements for bonds that are issued through a public offering?

To protect investors, the rules for ordinary admissions are supplemented with additional rules when bonds are marketed to retail investors:

- In terms of the content of the prospectus, the AMF and the issuer or its advisors note the final terms of the issue on the day when approval is granted.
- Any advertisement must be communicated to the AMF before it is distributed. The AMF checks that such advertisement is consistent with the financial terms of the issue and complies with current rules. A professional guide to best practice when marketing bonds to retail investors will be made available on the AMF website and is intended to specify the AMF's minimum disclosure recommendations for such documentation.
- In terms of language requirements for the prospectus, French is required only if the denomination per unit of the securities is less than €1,000. If the denomination per unit is €1,000 or more, a language customary in the sphere of finance (other than French) may be used. Only a summary in French is required. The final terms may also be written in a language customary in the sphere of finance (other than French)⁽¹⁰⁾.

The AMF has noted an increase in the number of public bond offerings in France since early 2010. It stressed that it pays close attention to the risks attached to these issues, which are aimed at individual investors. It recommends⁽¹¹⁾ retail investors to carefully scrutinise the risk factors relating both to the issuing company and to its bonds before taking a decision. It emphasises in particular that bond yields are very often attractive but must be viewed in light of the risk of non-redemption, depending on the issuer's financial position and prospects.

What AMF publications are available to help issuers prepare marketing materials for a public offering of complex debt securities in France?

Following an increase in the marketing of complex debt securities aimed at retail investors, the AMF issued in early July 2010 a **best practice guide to preparing marketing materials for complex debt securities**⁽¹²⁾. The aim is to inform professionals about practices that could be considered a breach of prevailing regulations and those that could contribute to a higher standard of disclosure.

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⁽¹⁰⁾ As regards public offerings specifically, it is nevertheless recommended that investors be provided with a French summary of the final terms.

⁽¹¹⁾ News release, 28 May 2010.

⁽¹²⁾ The term complex debt security refers to all bonds and structured EMTNs, with or without a capital guarantee at maturity, as well as certificates and warrants but not negotiable debt securities. However, the term does not prejudice the legal classification of these securities.

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The guide seeks to illustrate and facilitate enforcement of those regulations by analysing practical examples and making specific recommendations in each case.

Having noted an increase in the marketing to the general public of structured financial instruments carrying a high risk of mis-selling, the AMF issued a position in October 2010 to remind producers and distributors of their responsibilities in selecting the financial instruments they market. It drew their attention to the fact that some structured or complex financial instruments inherently carry a high risk of non-compliance with the legal and regulatory obligations applicable to their marketing.

What about the reform of buybacks of debt securities that do not give access to capital?

To make it easier for issuers to manage their debt, the AMF amended its General Regulation⁽¹³⁾ to reform the rules applicable to buybacks of debt securities not giving access to capital⁽¹⁴⁾.

The reform eliminates the tender offer regime applicable to debt securities under the General Regulation, replacing it with a simplified orderly acquisition procedure with much more flexible arrangements that can be implemented at the issuer's discretion. Furthermore, the buyout procedure for debt instruments not giving access to capital has been repealed, although it still applies to instruments that do provide access to capital.

⁽¹³⁾ Articles 231-1, 238-1 and 238-5 of the AMF General Regulation.

⁽¹⁴⁾ Instruction 2010-02, 25 May 2010.

CONTACT

To facilitate the process of reviewing applications, the AMF encourages issuers and their advisors to get into direct contact with the relevant AMF departments as early as possible to talk about the proposed issue and discuss any questions.

You can reach the Banking, Insurance and Debt Securities Unit of the AMF's Corporate Finance Division on +33(0)1 5345 6251