

Report of the Asset Management Stakeholders' Committee

Implementation into French Law of UCITS IV:
Situation and Outlook for Asset Management Regulation

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SUMMARY OF RECOMMENDATIONS

The Asset Management stakeholders' Committee has made **fourteen recommendations** for implementing the UCITS IV Directive into French law. Each recommendation is presented in greater detail in an annex.

- 1: Implement the UCITS IV Directive literally, leaving it to the European Securities and Markets Authority (ESMA) to make absolutely sure that investors receive equal protection in all Member States.
- 2: Enable retail investors to compare all the collective investment schemes marketed in France, whether UCITS or non-UCITS, by means of a mandatory Key Information Document (KID) for each scheme.
- 3: Step up oversight of promotional materials prepared for the marketing of collective investment schemes to retail investors, making no distinction between French and foreign schemes.
- 4: Ensure that, for all the collective investment schemes sold in France, investors have access to simple, appropriate disclosure documents on modifications to the schemes in which they have invested, thus allowing them to make informed choices.
- 5: Define the business of distributing financial instruments and harmonise the obligations that go along with this activity, regardless of the distributor's status.
- 6: Adopt regulations and administrative procedures that are conducive to the establishment and expansion of management companies in France.
- 7: Rationalise and simplify the range of collective investment schemes sold in France to make it clearer and more comprehensible to investors and to French and foreign professionals.
- 8: Bring France's rules into line with EU standards for the authorisation of collective investment schemes and the publication of fees payable by investors.
- 9: Promote the domiciliation of asset management operations in France by improving the dissemination of policies and providing one-stop service for all European passport applications.
- 10: Give distributors, investors (especially foreign investors) and order collectors access to standardised, complete information on French collective investment schemes marketed outside France.
- 11: Provide management companies with better information about the liabilities of the funds under their management, notably through systematic order marking.
- 12: Promote direct ordering under a secure legal framework in which foreign investors and distributors can deal directly with the management company, thereby benefiting from a system similar to the transfer agent system.
- 13: Take appropriate regulatory and operational provisions to minimise the risk of losses resulting from payment defaults on subscriptions to collective investment scheme shares or units. Pass any loss or gain to the collective investment schemes, as is common practice in other countries.
- 14: Raise awareness of the comparative advantages of France's fund management industry through international promotion campaigns conducted in partnership with the entire French finance community.

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Implementation into French Law of UCITS IV: Situation and Outlook for Asset Management Regulation

The entry into force of the UCITS IV Directive¹ on 1 July 2011 will introduce four kinds of changes:

- Simplification and improvement of the information disclosed to investors. The two-page Key Investor Document, which must be provided to investors before they subscribe, contains all essential information on the product.
- A simpler and quicker procedure for marketing UCITS abroad.
- The possibility of managing UCITS in a Member State other than the management company's home state. The 'management company passport' will enable the fund management industry to reorganise the way its activity is domiciled.
- New cross-border opportunities for the fund management industry to generate economies of scale and reorganise or rationalise the range of schemes they offer (via mergers and creation of master-feeder funds).

It is clear the cross-border opportunities opened up by the new directive will reshape the industry, both in France and across Europe. The industry will be able to rationalise the ranges of schemes it offers by means of cross-border transactions such as mergers of funds established in different Member States or by creating master-feeder structures. Using "product" and 'company' passports, it will also be able to develop customer bases in other Member States without having to create new funds or form an entity in each country.

The effects of the UCITS IV Directive will profoundly affect the French model for regulating asset management. Until now the model has been based on two fundamental principles: regulation of portfolio management companies, and regulation of collective investment schemes (CIS). The two approaches complemented each other: knowing the management company made for a better understanding of the quality of its products, and vice versa. But this logic no longer applies when funds authorised in other Member States are marketed in France and when management companies established abroad create funds in France. These are two of the possibilities opened up by the UCITS IV Directive, and an increasing number of industry players are likely to choose them.

France's asset management industry, which now holds a 23% share of the collective investment market in Europe,² has to prepare for these changes, and the French authorities must prepare for them as well in the implementation of the UCITS IV Directive. They will need to reconcile maintaining a high level of investor protection in France with making the French regulatory framework attractive enough to draw in foreign investors and asset managers. Far from being at odds, these two objectives share the same logic: France can and must offer a regulatory framework that is secure but does not hinder the development of the fund industry. If it fails to do so, then investors and fund providers may well turn to other financial centres, which may have lower standards of protection.

For this reason, the French securities regulator has set up a Asset Management Stakeholders' Committee³ to consider measures that would reconcile investor protection with development of a strong national industry. The committee has identified three strategic principles:

- implement the UCITS IV Directive faithfully (part 1 of this report),
- refocus asset management regulation on monitoring the distribution of CIS (part 2 of this report),
- help to make French financial markets more competitive (part 3 of this report). France must take this opportunity to ponder the reasons why its fund administration business has been unable to grow as dynamically as its investment management business in the past few years.

These two objectives – better investor protection and a more competitive fund management industry – cannot be achieved unless the measures proposed to meet them take in the entire collective investment sector. This is why the Asset Management Stakeholders' Committee has extended the scope of its review to include all CIS that might be set up, managed or marketed in France, not just UCITS under French law.

¹ Directive [2009/65/EC](#) of the European Parliament and the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

² Source: AFG, EFAMA, CSSF, IFIA. This figure includes all funds managed by a management company established in France, whether or not the fund itself is domiciled in France.

³ The composition of the Cross-Industry Committee is given in Annex 3.

1. Implement the UCITS IV Directive literally

The Asset Management Stakeholders' Committee believes that the cross-border opportunities created by the UCITS IV Directive will lead to greater openness in the European asset management market by bolstering the freedom of establishment and the freedom to provide services in this field. Concretely, this is likely to be manifested in France by an increase in the supply of foreign funds (managed by a French or foreign entity) and French funds managed by entities established in other Member States.

These cross-border opportunities are a potential growth path for French management companies, but the practical consequences could be limited if additional investor protection rules were to be introduced at national level. The effectiveness of such measures would in any case be uncertain. The rules could easily be circumvented by fund providers taking advantage of cross-border opportunities from a base in another Member State. Thus, to avoid an outcome in which French investors are lured by funds partly or entirely beyond the supervision of the country's regulator, France must adopt an open, European approach. This means implemented the directive literally. In principle, this position means the French regulator will ultimately abandon some national rules it had adopted to strengthen protection of French investors. However, it will be up to France to ensure that literal implementation does not undermine investor protection, a consideration that must remain a central concern at EU level as the UCITS IV Directive is transposed.

Alongside this literal implementation, investor protection rules will have to be closely harmonised. In this regard, the European Commission and ESMA seem to be the most legitimate bodies for ensuring such harmonisation, notably by laying down binding technical measures ('Level 3' provisions) as part of the future architecture of EU-level supervision. Such Level 3 measures will set precisely defined operational conditions for implementing the rules of the directive so as to avoid divergent interpretation or application of those rules among Member States. These measures ought to ensure the same level of protection for investors regardless of the nationality of the CIS that is marketed to them. The most topical example of the necessity for EU-wide harmonisation of rules and implementing conditions is the present difference of interpretation across Member States on the duties and obligations of fund depositaries, which in turn leads to varying levels of investor protection.

Where investor protection is threatened, however, stricter rules may prove necessary, on an exceptional basis; but additional rules of this kind should be the exception, not the rule. This is the case, for example, as regards the status of agents authorised to assume the management of French-law CIS under a delegation arrangement. The French regulator believes that, to prevent avoidance of the directive's principle restricting the activities that a management company may engage in if it manages UCITS, only entities authorised to manage CIS should be authorised to manage French schemes by delegation. It should be emphasised that this rule does not apply to funds established outside Europe. In such case, the French regulator takes the view that the rules of the fund's home country apply.

The limitation imposed by the French regulator is highly investor protective insofar as it heads off any conflict of interest between the delegatee firm's delegated management activity and its other activities. It has not been adopted by all Member States, however. The Asset Management Stakeholders' Committee's consideration of this issue has highlighted three conceivable options:

1. keep the existing rule.
2. restrict the rule to French CIS.
3. replace the rule with a requirement for delegatee firms to establish procedures for managing conflicts of interest, regardless of the nationality of the fund.

At this stage, the Asset Management Stakeholders' Committee favours the second option. This solution, though, has the drawback of being easily circumvented. Fund producers could relocate their management entities and their funds to a Member State that does not restrict delegation of CIS management. They could then market their funds in France via the "product" passport. The Asset Management Stakeholders' Committee therefore suggests that an in-depth analysis be made to determine whether additional conditions ought to be imposed. For example, this measure could be accompanied by a rule banning foreign funds from being marketed in France if they have delegated financial management to an entity not authorised to manage CIS. The analysis should also aim to verify whether these two rules in combination would not effectively confine the range of products offered to French investors to French CIS alone.

Recommendation 1: Implement the UCITS IV Directive literally into French law, leaving it to ESMA to make absolutely sure that investors receive equal protection in all Member States.
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2. Refocus asset management regulation on monitoring the distribution of CIS

2.1. Improve the requirements for disclosing information to investors at point of sale

2.1.1. *Implementing the Key Information Document (KID)*

The UCITS IV Directive improves disclosure to investors before they invest by replacing the simplified prospectus with the Key Information Document (KID). The content and format of the KID is standardised for all UCITS in the European Union, regardless of country of origin. Its purpose is to present the essential characteristics of the scheme so that the investor can make an informed decision.

In practice, when drafting a KID, fund managers will have to make a considerable effort to summarise information. The Asset Management Stakeholders' Committee would like the AMF to draw up guidelines with a view to assisting management companies with the preparation of their KIDs and ensuring a degree of uniformity in presentation, thus facilitating investors' decision-making. These guidelines should focus on content, in particular for the presentation of risks, the investment strategy and the investment objectives. The guidelines should be issued quickly so that the industry can ready itself to meet the deadline set by the European Commission: all UCITS must have a KID no later than 1 July 2012.

The UCITS IV Directive requires a KID for UCITS only. This raises the question of how other French CIS, offered alongside UCITS, are to be treated. Information documents allow investors to make comparisons between the various funds offered to them. Comparison would become difficult or even impossible if investors have to compare documents in which neither the content nor the presentation is standardised. For the French fund industry, furthermore, extending the KID requirement to all CIS would make it easier to establish this document as the standard fund marketing tool. However, imposing the KID requirement on funds intended solely for professional investors could burden the industry with needless costs. The Asset Management Stakeholders' Committee consequently suggests following the principle previously applied for the simplified prospectus: the KID would be extended to all CIS distributed to retail investors. Management companies would still have the option of preparing a KID for schemes intended for professional investors. The workload and expense involved in preparing KIDs will, however, make it necessary for the AMF to establish a suitable phase-in period for implementing this measure.

Recommendation 2: Enable retail investors to compare all the collective investment schemes marketed in France, whether UCITS or non-UCITS, by means of a mandatory Key Information Document (KID) for each scheme.

2.1.2. *Strengthen and enhance oversight of marketing campaigns*

Transforming the simplified prospectus into a KID focused on essential information will limit the use of additional documents to some extent, but fund marketing will continue to rely partly on promotional documents. Regarding promotional materials for financial instruments, the rules on presentation are currently set forth in the Markets in Financial Instruments Directive (MiFID). The AMF must therefore ensure that entities distributing CIS in France comply with MiFID provisions.

Currently, to check compliance with the regulatory requirements, the AMF reviews the sales literature for a CIS before the scheme can be sold in France. These documents are examined either at the time authorisation is requested for a French CIS or when notification is received of a foreign scheme to be marketed in France. A risk-based approach is taken for these checks: they are done systematically for structured funds, funds with a particularly complex investment strategy, and those considered to carry a high risk of mis-selling if targeted at retail investors. In addition, the AMF is developing a capability to monitor the information disseminated about CIS (sales documents, advertisements, brochures, monthly reports, Web banners, etc.). As part of its New Strategy Proposals, published in December 2009, the AMF also announced that it would step up enforcement by monitoring marketing campaigns for retail investment products. This enhanced oversight entails monitoring how management companies conduct their distribution business as well as monitoring other providers that distribute financial products in France. It also entails stepped-up ex-ante and ex-post controls.⁴

In practice, the changes that will be brought about by transposing the UCITS IV Directive into national law give all the more reason for tightening requirements on CIS marketing. Reviewing sales literature will become one of the

⁴ The ex-ante controls consist of systematic verification of advertising documents before they are released to the public, to ensure that the information provided to the investor in the marketing materials is consistent with the regulatory documents for the financial products in question. The ex-post controls are intended to detect abusive marketing practices. They take the form of investigations or special audits conducted by the AMF staff.

main ways in which the regulator will exercise its investor protection role because this procedure can be applied uniformly, regardless of the fund's legal structure or domicile. Moreover, review of sales literature is part of a harmonised framework for addressing substitute products, currently CIS and financial securities (via MiFID), in future, perhaps, unit-linked life insurance contracts (via the European Commission's reconsideration of retail investment product marketing⁵ and the consequences of the Deletré report⁶ at national level).

To strengthen these controls and make them more effective, the regulator should structure them better, in keeping with the initiative it has recently undertaken. Most importantly, since the process of document preparation frequently involves multiple intermediaries, the controls ought not to relate solely to the marketing materials of fund distributors. They should be expanded to include all actions involved in marketing, whether written or oral and no matter which entity (distributor, management company, etc.) is responsible for them. However, strengthening these controls must not result in French funds being treated differently from foreign funds marketed in France. Aside from the ex-ante controls already in place, supervision of fund marketing for CIS distributed in France will in principle occur only after the marketing campaigns have begun or promotional materials are in use.

Recommendation 3: Step up oversight of marketing materials prepared for the marketing of collective investment schemes to retail investors, making no distinction between French and foreign funds.

2.2. Improve the requirements for disclosing information to investors throughout the life of the investment

The characteristics of a CIS can change over the course of its life. The types of modifications are many and varied. They may have minimal consequences, or they may change the scheme's risk profile (for example, by altering the investment strategy) so much that it no longer meets the investor's initial objectives.

The French regulator has already set rules for such modifications by requiring CIS to inform investors individually of substantive modifications before they take effect. This is done by letter to the investor. For minor modifications, investor can be informed 'collectively', for example, through the press or in a notice on monthly statements.

In practice, the letters to investors are not always able to deliver a clear, straightforward message about the nature and impact of the planned change. Moreover, they are in some cases excessively costly in relation to the benefit that investors get from being informed individually.

The cross-border opportunities under the new directive will multiply the possibilities for modifications that could substantially change a fund's risk/return profile. One example would be a merger of funds pursuing significantly different investment strategies (the directive does not empower the regulator to assess the appropriateness of a merger in timely fashion). This situation makes it all the more necessary to clarify how investors will be kept informed over the life of a CIS.

The Asset Management Stakeholders' Committee believes that informing investors individually is not suitable for all types of modifications affecting a CIS. Some modifications will not alter the fund to the point that it no longer meets the objectives that initially prompted the investor to subscribe. In such case, informing investors individually would be burdensome and inappropriate. On the other hand, some modifications could prompt the investor to reconsider, as when the fund's objective, investment strategy or risk profile is changed so much that it no longer corresponds to what the investor initially sought. In view of the high cost to the industry of informing investors individually, this measure should be mandatory only if the planned modifications are substantial and could therefore have major consequence for the investor.

Since the KID, by design, contains all the essential information on the CIS, modifications that do not change the document's contents need not necessarily be analysed to determine whether they amount to substantive modifications. Furthermore, since modification of certain items in the KID (the name of the CIS, for example) will have no major impact for the investor, informing investors individually should not be required for changes in minor KID items.

Where individual notification is required, the information provided must present a clear overall picture of the modifications so that investors can grasp how their investment will be affected. The content of the notice should therefore be limited to describing the operation affecting the fund, explaining the impact it will have on the investor, and presenting his or her options in response. The Asset Management Stakeholders' Committee

⁵ Retail investment products backed by financial instruments, known as 'packaged retail investment products' (PRIPs).

⁶ Report of the mission conducted by Bruno Deletré, *Inspecteur des Finances*, to reconsider and make organisational and operational proposals concerning the supervision of financial activities in France. His report was submitted to the Minister for the Economy, Industry and Employment in January 2009.

proposes that the regulator require the preparation of a standard, short (no more than two pages) form letter for all notifiable modifications affecting funds marketed in France.

For other modifications, other means of informing investors such as notices in the press, on websites or via e-mail should be studied.

Also, the current rules on informing investors of modifications are based on the sections of the simplified prospectus that will be affected. The transition to the KID therefore requires a substantial recasting of the corresponding regulatory framework.

Lastly, there is no logical reason why investor disclosure rules should vary according to where the CIS is domiciled. Accordingly, these rules should apply to all CIS marketed in France.

Recommendation 4: Ensure that, for all the collective investment schemes sold in France, investors have access to simple, appropriate disclosure documents on modifications to the schemes in which they have invested, thus allowing them to make informed choices.

2.3. Improve the regulatory framework governing distribution

In the current regulatory framework in France, the act of distributing financial instruments is not defined as such in the regulations or in AMF positions. Persons or entities authorised to distribute CIS may opt for a number of different statuses, primarily direct marketers working for banks or financial firms, financial investment adviser, investment services provider or insurance company. The obligations that go along with these statuses – training requirements, rules on remuneration, duty to advice, duty to warn – may vary, as may the liability of the distributor. Distribution may consist, among other things, in supplying an individualised recommendation, approaching potential investors on the initiative of the seller, or simply making available a list of funds ('fund supermarket').

Refocusing the regulation of asset management on oversight of distribution requires, first and foremost, that there be a consistent, comprehensible regulatory framework for CIS distribution.

Furthermore, investor protection must not depend on the status chosen by the distributor, over which the investor has no influence and which he or she cannot even identify at the time of distribution.

And regardless of the status of a given distributor, uncertainty about the division of obligations between the distributor and the producer means that neither the distributor nor the management company can identify exactly what rights and obligations it has and what liability it bears. This uncertainty also harms the investor, who is often unable to identify who is responsible and whom to contact in the event of a problem.

It should be emphasised that the division of obligations between distributor and producer has been specified recently only with regard to the preparation of marketing materials.⁷

Clarifying the obligations of the distributor and the producer in other respects is a manifest necessity. Doing this properly would involve a comprehensive review of all the existing statuses in order to reach a definition of distribution and to harmonise the obligations attaching to this activity, regardless of the distributor's status. This could be done as part of an effort at EU level.⁸

However, such a comprehensive review could be lengthy. For the present, the Asset Management Stakeholders' Committee suggests that the AMF work in concert with the industry to:

- determine what elements should be included in any agreement between the producer and the distributor. These elements should be in line with best practices and should reflect an industry consensus on the respective obligations of the producer and the distributor.
- propose amendments to the regulatory framework for distribution (for example, by fleshing out the regulatory definition of what should be included in a distribution agreement).
- supplement the existing rules and regulations, by publishing policy documents.

While work of this kind should naturally serve to clarify the obligations and responsibilities of distributors and producers before a subscription is made, it should also address these same issues throughout the period of the

⁷ Decree no. 2010-40 of 11 January 2010 on agreements between producers and distributors regarding marketing of financial instruments and life insurance products.

⁸ This work effort could begin with the ideas put forward by the European Fund and Asset Management Association (EFAMA). On 22 March 2010 EFAMA published a report on the evolving landscape of long-term savings in Europe in which it recommends three ways to achieve improvement in the distribution of retail products.

customer's investment in the CIS. For example, modifying certain characteristics of a fund might obligate the distributor to pass along information transmitted by the management company under the agreement between them, or it might require a new contact between the distributor and the customer to ensure that investors receive adequate service and support. These requirements could also be modulated according to the precise nature of the service provided by the distributor and the way the distributor is compensated for providing it. As it is, most fund distributors do not charge fees directly to investors but instead receive a fee from the management company for the funds they distribute. These fee payments, which may be quarterly, half-yearly or yearly, often continue as long as the investor remains in the fund. On this ground, it would be legitimate to hold that only distributors who provide an ongoing service to customers throughout their investment should be authorised to receive ongoing fee payments from the management company up to the time of redemption.

Recommendation 5: Define the business of distributing financial instruments and harmonise the obligations that go along with this activity, regardless of the distributor's status.

3. Help to make French financial markets more competitive

The investment management industry is unquestionably one of Paris's strengths as a financial centre. France has more than 550 management companies, nearly 60% of which manage UCITS. France has a deep pool of skills in this field that enables it to build business in both traditional and alternative investment management.

Furthermore, one of the distinguishing features of the French financial centre is its ability to foster the development of entrepreneurial management companies.

The work of the Asset Management Stakeholders' Committee has shown that professionals in this industry intend to use the entry into force of the UCITS IV Directive as an opportunity to reconsider how they are organised and to rationalise the location of their operations – not only where their financial management activities are domiciled, but also where their funds are domiciled. It is therefore essential for France to seize the opportunity of transposing this directive and implement measures that will preserve a high level of investor protection and at the same time provide a more attractive regulatory framework for investment management going forward.

To keep France competitive as a financial centre, these measures should not be confined to management companies subject to the UCITS Directive and to UCITS themselves, since management companies naturally have diversified activities that are beyond the scope of that directive. For this reason, the Asset Management Stakeholders' Committee's review has looked at all the players, products and services in the asset management industry.⁹

Making France more attractive as a location for management companies and funds means making France more competitive as a domicile for both investment management activities and fund administration activities.

The Asset Management Stakeholders' Committee has also stressed that, as with any economic activity, the tax and employment law environment plays an important role in the choice of location. As a contribution to the debate, the committee has made a survey of the factors considered to be most important in the choice of location. These factors are presented in Annex 2.

Making France more attractive as a location for management companies and funds means making France more competitive as a domicile for both investment management activities and fund administration activities. The government shares these concerns. The Financial Services High Level Committee chaired by Christine Lagarde, Minister for the Economy, Industry and Employment, decided on 5 May 2010 to launch a strategy and development initiative for France's asset management industry. To this end, a committee headed by the chairman of the French asset management association (AFG), the director general of the Treasury and the chairman of the AMF has been charged with developing proposals to lift barriers to the marketing of French investment funds internationally and to promote France's asset management industry abroad. The committee is to issue its proposals this coming autumn. This steering committee will finalise the work begun by the Asset Management Stakeholders' Committee on determining what legislative and regulatory measures are needed to implement the various solutions identified.

Enhancing France's competitiveness as a financial centre ultimately implies adopting a number of detailed measures, such as those suggested in this section. These measures would represent a real commitment on the part of the authorities and the regulator and would entail potentially substantial investments for the industry. Accordingly, the financial community will have to concentrate on using the new provisions effectively so that all these efforts can come to fruition.

3.1. Enhance France's competitiveness as a domicile for investment management activities

3.1.1. Clarify the responsibilities of depositaries

The depositary plays a key role in ensuring a high level of protection for investors in collective investment vehicles. Since this role is not harmonised within the EU, investor protection has been seriously undermined by varying interpretations of the depositary's duties and responsibilities. Lack of harmonisation could also constitute a significant obstacle to Paris's competitiveness as a financial centre by paving the way for regulation shopping that would benefit other European venues where depositary liability is less strict.

The French regulator and the industry have cooperated closely on sketching the contours of a regulatory regime for depositaries of retail funds. The regime meets the three major objectives of financial regulation: a high level of protection, especially for less sophisticated investors; orderly market functioning; and financial stability.

⁹ Management companies that manage collective investment schemes (UCITS and non- UCITS), companies that provide administrative and accounting services for funds, etc.

The Asset Management Stakeholders' Committee suggests that the regulator and the industry continue this cooperative effort beyond implementation of the UCITS IV Directive, with a view to finalising the reviews under way at national level. Lastly, the committee fully supports the French authorities' contribution to the debate that will ensue at EU level if the European Commission goes through with its intention to tackle the glaring lack of regulatory harmonisation concerning depositaries by, for example, opening discussions on amending the UCITS Directive or initiating cross-cutting legislation.

3.1.2. Improve the authorisation procedure for management companies

The efficiency of an authorisation procedure is measured by how fast, how simple and how predictable it is. The regulator must, however, receive the information it needs to assess the proposed activity and verify that the management company has the organisation and resources required to conduct it.

The work of the Asset Management Stakeholders' Committee has highlighted the fact that management companies' submissions are voluminous and very detailed, but still fail to provide what the regulator needs to make a proper determination of whether the company has the capacity to carry on the proposed activity. What is more, the authorisation procedures rely on applicants providing a specific programme of operations for each type of investment. This considerably increases the administrative burden on management companies. At present, as soon as the management company wishes to extend the scope of its business in any significant way, it must go through what is effectively a new authorisation procedure.

To speed up the authorisation process for portfolio management companies and make it less burdensome, the Asset Management Stakeholders' Committee suggests lessening the emphasis on the programmes of operations and refocusing on the elements that are essential and indispensable to the regulator's analysis. Three key subject areas have been identified:

- the organisation of the management company,
- the resources at its disposal, and
- the internal control system in place within the company.

This minimum content would have to be expanded to include more specific elements where the company plans, at inception or later during its life, to manage investments in what are deemed to be high-risk asset classes.

In addition, the number of items of information that a management company is required to declare or submit to the AMF when its activity or organisation changes is particularly large. This, too, generates a significant administrative cost. The current authorisation system needs to be re-examined for relevance and cost-effectiveness. The regulator has undertaken to revise the 'supplementary information' forms that management companies use to inform the regulator, with a view to eliminating information requests of little relevance.

3.1.3. Make technical amendments to management company regulation to enhance the competitiveness of the French framework

The Asset Management Stakeholders' Committee has identified a number of gold-plating situations, where French rules (in the regulations or the in the AMF's positions) are more demanding than those set by the directive, with no known benefit in terms of investor protection. The committee consequently proposes re-examining the regulatory framework for relevance on the following points:

- Regulation of groups: Some management companies are organised as corporate groups, with subsidiaries that may be specialised and located in different countries. Some rules that are readily applicable to independent companies may be difficult to apply in a group, for example because the main executive bodies are centralised at the parent company. To comply with the rules, these companies resort to complex legal arrangements which, *prima facie*, make it possible to meet the requirements but which, in practice, do not correspond to the way they actually operate. To cite two examples, the rules on intra-group delegation and the policies on senior managers should be adapted to the organisation of corporate structures of this type.
- Rules for delegating financial management: The AMF's current position on delegation of financial management requires the management company to have resources equivalent to those of delegatee firm. Not infrequently, though, the reason to delegate financial management – as is generally the case with outsourcing – is to draw on expertise not available in-house, on an as-needed basis. The committee therefore proposes that the AMF's positions on this matter be refocused on the management company's capacity to supervise the delegatee firm rather than its ability to take the delegatee's place.

- Use of advisers: The French interpretation of the MiFID provisions on investment advisory services currently prevents management companies from obtaining such services from foreign entities.¹⁰ The committee suggests that the AMF re-examine the possibility of easing its requirements to the extent consistent with applicable law (or that corresponding changes to the directive be suggested at EU level). Amendments of the current rules should of course be accompanied by conditions that ensure investor protection and reiterate the need for management companies to be autonomous when taking investment decisions.
- Dedicated funds: The regulations establish the principle of management company autonomy in investment decisions. However, some CIS are dedicated to a single customer or group of customers and are in effect a form of investment mandate. A loosening of the interpretation of the principle of management company autonomy in this context could be studied.
- Delegation of administrative and accounting management: Where a company delegates fund valuation to a third party, it is required to conduct an audit to verify that the third party is performing its task properly. Such audits can prove difficult, especially where the difference in size between the two entities is so great that, in practice, the management company is unable to verify the work of the valuation delegatee. Moreover, the valuation delegatee is in a position where it is audited by all the companies it serves in this capacity. Requiring all these companies to check its work does not necessarily make the system safer or more effective. The Asset Management Stakeholders' Committee suggests drawing up common standards covering the duties, best practices and expectations of management companies and valuation delegates. These standards should have sufficiently authoritative status so that, if the valuation delegatee undertakes to comply with them, management companies would be able to modulate their audits. The precise legal framework for implementing this measure will have to be determined in conjunction with the stakeholders. It must in no way affect the management company's liability for the valuation of the CIS it manages.
- Exercise of ancillary activities: Customers of management companies sometimes want to invest in products that can be substituted for CIS, such as structured EMTNs. In some cases, the management companies will need to be authorised to provide placing services in order to distribute such products. In France, asset management companies are not authorised to provide this investment service. The Asset Management Stakeholders' Committee suggests that the AMF examine conditions under which a management company could be authorised to offer products substitutable for CIS without falling foul of conflict-of-interest rules. A relaxation of the regulations to this end must of course establish the necessary safeguards to ensure that management companies are totally prohibited from placing securities in discretionary management mandates or in the CIS they manage.

Recommendation 6: Adopt regulations and administrative procedures that are conducive to the establishment and expansion of management companies in France.

3.2. Enhance France's competitiveness as a domicile for CIS

3.2.1. *Adopt a product classification system that will be better understood internationally*

France has more than 15 legal forms of investment vehicle. The large number of categories does not make it easy for French investors – let alone foreign investors and investment professionals – to understand the French product offering. The Asset Management Stakeholders' Committee suggests that the range of investment funds allowed under French law be rationalised into three categories:

- funds for the general public, which are subject to authorisation;
- funds for specific categories of investors, which are subject to authorisation;
- funds restricted to certain categories of investors, which are subject to a registration procedure.

¹⁰ Under current regulation in France, only an investment services provider established in a Member State or a financial investment adviser established in France may provide advice on financial instruments to a management company. But for certain management activities – for example, managing a CIS that invests in Asian equities – advice from persons specialised in these securities is important to the development of the activity, and these persons are often domiciled in Asian countries.

The rules applicable to these three categories of funds could vary according to the type of investments, e.g. venture capital, real estate, transferable securities, funds of hedge funds.

Recommendation 7: Rationalise and simplify the legal range of collective investment schemes sold in France under French law to make it clearer and more comprehensible to investors and to French and foreign professionals.

3.2.2. *Revise the authorisation rules for French CIS*

If, as part of the authorisation procedure, the regulator requires excessively detailed information disclosures to investors, this can lead to frequent changes in disclosure documents and repeated authorisation procedures with no real benefit to the end customer. The Asset Management Stakeholders' Committee suggests that the AMF find a fairer tradeoff. The need for detailed information in the regulatory documents needs to be balanced against the fund manager's need for sufficient latitude to implement its strategy without having to amend these documents too frequently.

Furthermore, the AMF's regulations and positions on CIS impose restrictions on investment strategies and techniques and on the legal form of a fund that are not imposed by the UCITS Directive. (Examples include restrictions on the use of asset pooling techniques, restrictions on the corporate form of SICAVs, and the dividend distribution constraint based on accounting profit.) The Asset Management Stakeholders' Committee suggests that the situations where AMF regulations or positions interpret the EU rules restrictively should be sharply limited. The suggested revision of regulations and positions could be accompanied by obligations that would serve to maintain investor protection. Thus, previously disallowed investment strategies and techniques could be allowed provided subscribers are properly informed of the risks associated with them.

3.2.3. *Align the presentation of fees charged to fund investors with the "European standard"*

Practice has shown that French funds are competitive with those of other Member States in terms of total fees. However, France's regulations on how fund management fees are to be presented make it impossible to highlight this competitive fact. In their prospectus, French CIS are required to indicate a maximum fee rate that includes management fees and operating fees. The "European standard", on the other hand, is to indicate a maximum rate for management fees alone, with other operating costs borne by the fund shown separately.¹¹ For some foreign funds, furthermore, operating cost are split out by type of fees (depository, auditors', etc.), with a flat rate shown for each. Investors consequently have a tendency to compare, wrongly, the overall fee rate of French CIS with the management fee rates posted by foreign schemes.

To level the playing field in this respect, the Asset Management Stakeholders' Committee suggests that French regulations be revised to move them closer to the "European standard". To avoid a decline in the quality of fee information disclosed to investors, the Asset Management Stakeholders' Committee proposes two additional measures:

- step up investor education efforts and make information on effective total fees more readily available for all funds authorised to be marketed in France (fees calculated ex-post or, for newly created funds, expected fees for the first year). At the time of sale, the fund professional would have to explain the various fees to the investor and help him or her to understand the full amount;
- monitor distributors to ensure that they take the level of fees into account when recommending a product.

Recommendation 8: Bring France's rules into line with EU standards for the authorisation of collective investment schemes and the publication of fees payable by investors.

3.3. *Continue current efforts to disseminate AMF's positions*

For France to become more competitive as a financial centre, it is essential for its regulations to be visible and accessible. Foreign professionals in particular need to know quickly and easily what the formalities are for establishing in France and what obligations they will take on by doing business in France. The AMF has already taken action on this front as part of its New Strategy Proposals. The Asset Management Stakeholders' Committee

¹¹ Thus, a French equity fund will post, for example, a maximum rate of 1.5% for management and operating fees, whereas a fund in another Member State will post a maximum rate of 0.5% for management fees, with operating fees indicated on an ex-post basis over the life of the fund.

takes this opportunity to suggest that the AMF should prepare professional guides on the regulation of management companies, CIS and fund distribution activities.

3.4. Support the French industry's export efforts by streamlining the procedures for "product" and 'company' passports

The UCITS IV Directive alters the original notification procedure for authorisation to market a scheme in another Member State. The obligation to notify the host country regulator is transferred from the management company to the regulator in the management company's home country. A similar notification procedure has been adopted for the management company passport (only the content of the notice is different.) To foster exports of French investment management services and French funds, the committee recommends that the AMF put in place an efficient, dedicated organisational unit to handle 'outbound' passport applications from French management companies.

Recommendation 9: Promote the domiciliation of asset management operations in France by improving the dissemination of AMF's positions and providing one-stop service for all European passport applications.

3.5. Foster the development of cross-border fund marketing within open-architecture distribution schemes

3.5.1. Improve and standardise information on French CIS

Facilitating the marketing of French CIS abroad requires distributors and institutional investors to have ready access to information on those funds. Most important of all is the technical information on subscription and redemption procedures. EFAMA has developed a European standard in this area called the Fund Processing Passport (FPP). The committee proposes that producing an FPP should be made mandatory for all French CIS that wish to be marketed abroad. The committee calls on management companies to use the portal developed by the AFG as a means of making their FPPs available to distributors.

At a later stage, an industry-wide reference database containing all the information on CIS could be envisaged. This database would hold all the information needed for the two-way exchanges between the management companies, on one hand, and distributors, investors and the regulator on the other.

Industry groups have already been working on the design of this database. Implementation will require forming a technical working group to fine-tune the operating rules and the specifications.

Recommendation 10: Give distributors, investors (especially foreign investors) and order collectors access to standardised, complete information on French collective investment schemes marketed outside France.

3.5.2. Enhance management companies' knowledge of their investors and their distribution network through systematic order marking

One of the value-added services provided by transfer agents¹² is that they keep track of each distributor's positions and calculate the associated commissions. What makes this service possible is that the transfer agent knows the identity of the fund's investors and distributors and enters them in the fund's register. The French financial community needs to organise itself so that it can provide equivalent services. In particular, the Asset Management Stakeholders' Committee recommends that subscription and redemption orders should be systematic marked so that the management company will know exactly what positions its distributors hold and who its investors are. In this way it will be better able to tailor its services to the needs of its customers.

Recommendation 11: Provide management companies with better information about the investor base of the funds under their management, notably through systematic order marking.

3.5.3. Make it easier for foreign investors to subscribe to French CIS by developing a system of direct ordering, on a model similar to that of a transfer agent system.

The French fund subscription scheme was initially conceived as part of a closed-architecture system: the retail banking arm distributed the funds run by the management company or companies of the group's asset management arm. This arrangement relies heavily on using the infrastructure of the central depository, which has no direct commercial relations with fund distributors or investors. This system, although renowned for its technical efficiency and legal certainty, runs up against its limits in open-architecture distribution schemes. The problem is that it cannot easily identify fund investors or distributors at the level of each management company. In other

¹² Cf. section 3.5.3 on the role of the transfer agent

European countries, fund subscription and redemption orders are handled bilaterally between the investors or distributors and a transfer agent, and this agent records the identity of the investor or distributor in the fund's register. This means the management company is well informed at all times about the investor base of the funds it manages.

In this context, the Asset Management Stakeholders' Committee recommends pursuing efforts to clarify the possibility of direct ordering. An investor or a distributor would send a subscription or redemption order directly to the management company or the collector, which would then record the name of the investor or distributor in the fund's register. A model of this kind, based on keeping a register of investors and distributors by name, offers the adaptability and flexibility of the transfer agent model while still providing legal certainty under French securities law.

The two models of the order transmission channel, one resulting in a bearer book-entry and the other resulting in a registered entry, are complementary. Both could be offered to investors with their respective advantages, drawbacks and costs.

Recommendation 12: Promote direct ordering under a secure legal framework in which foreign investors and distributors can deal directly with the management company, thereby implementing a system similar to the transfer agent system.

3.5.4. *Eliminate the obstacles to subscription and redemption orders being accepted directly by the collector*

Some foreign investors are currently unable to invest in French CIS because order collectors do not accept orders transmitted by unfamiliar financial intermediaries. This is because the collectors do not want to incur the potential financial risk of payment default by the subscribing investor. In practice, the CIS manager invests in assets when a subscription order is received, even though the payment for the order has not yet been made. According to industry professionals, this practice avoids temporarily diluting subscribers' exposure to the market. If the new subscriber defaults, though, the fund manager will have to reverse the position, and this could result in a loss for the fund. The proposal is to follow the example of other countries and make the fund bear the risks associated with investing immediately, provided that appropriate regulatory and operational measures have been established to secure the order transmission channel in its entirety. The AMF could clarify its positions on this subject.

Recommendation 13: Take appropriate regulatory and operational provisions to minimise the risk of losses resulting from payment defaults on subscriptions to collective investment scheme shares or units. Pass any loss or gain to the collective investment schemes, as is common practice in other countries.

3.6. Promote French products and French regulation abroad

The French financial community, through its professional associations, has already undertaken promotional campaigns to make France's asset management capabilities better known beyond the country's borders. These efforts are still too few and far between. The Asset Management Stakeholders' Committee finds that foreign investment professionals and regulators know little about French funds and regulation. The Asset Management Stakeholders' Committee therefore suggests that efforts to promote the French industry and CIS abroad should be restructured and redoubled without delay.

The members of the working group have underscored the importance of measures to make it easier to subscribe to French CIS. The Asset Management Stakeholders' Committee suggests that instructional materials be developed for distributors on the subscription procedures for French funds as well as the formalities for forming a management company or creating a CIS in France.

Recommendation 14: Raise awareness of the comparative advantages of France's fund management industry through international promotion campaigns conducted in partnership with the entire French finance community.

Appendix 1: Technical fact sheets with details of the recommendations

TECHNICAL FACT SHEET 1

Recommendation 1: Implement the UCITS IV Directive literally into French law, leaving leave it to ESMA to make absolutely sure that investors receive equal protection in all Member States.

OBJECTIVE

Implementing the UCITS IV Directive into French law should ensure that France's asset management industry is fully competitive with its counterparts in other Member States. For this reason, implementation must be completed well in advance of 1 July 2011 so that French market participants and products can benefit without delay from the advantages and opportunities offered by the directive.

However, a high level of investor protection must still be maintained.

STRATEGIC GUIDELINES

The UCITS IV Directive needs to be transposed verbatim into French law to ensure that France's asset management industry is fully competitive, as was the case for when the Markets in Financial Instruments Directive was implemented.

However, to ensure that implementation of the UCITS IV Directive into the domestic law of each of the Member States does not undermine investor protection, the measures taken at European level must ensure top-down harmonisation of this protection. Therefore, the AMF will continue to urge that the ESMA be given powers that are broad enough to ensure a high degree of investor protection in all Member States. Furthermore, the AMF will make every effort to make its voice heard in Europe.

In very exceptional cases, however, the lack of a consensus on the interpretation of certain provisions in the directive could jeopardise some of the underlying principles and thus weaken the protection afforded to investors. In this handful of cases, the AMF will be obliged to adopt stricter rules that are critical for ensuring a high level of investor protection.

This is the case in particular with regard to the status of market participants that are authorised to manage French collective investment schemes (CIS) under a delegation arrangement. France deems that French schemes must be managed under delegation solely by entities authorised to manage CIS. The purpose of this position is to prevent avoidance of the directive's principle restricting the services that a management company may provide if it manages UCITS. The Directive restricts such services to portfolio management and investment advice. This means that a management company does not have the right to provide investment services such as proprietary trading or underwriting. This restriction is warranted by the major conflicts of interest that would arise if the same entity engaged in the CIS management business while providing investment services other than investment advice and portfolio management. These conflicts could not be addressed merely by establishing conflict-of-interest management procedures. The AMF deems that the mechanism for delegating management should not make it possible to circumvent the principle set out in the directive by enabling an investment services provider to manage a CIS under delegation while providing other investment services that the directive "prohibits" management companies from offering.

It should be stressed that the directive's principle restricting CIS management companies' activities is essential for ensuring a high level of investor protection. If a management company fails to comply with this principle, it would no longer be able to act in the sole interest of the unit holders or shareholders. For example, a troubled investment services provider may be tempted to invest the assets of CIS it manages under delegation in the certificates of deposit that it issues, even though it is not in the interest of the schemes' unit holders or shareholders to invest in such instruments.

However, this principle does not rule out delegating CIS management to an entity outside of the European Economic Area, as long as that entity is properly authorised to manage investment funds.

However, not all Member States apply this rule, which means that three solutions are possible:

- 1) keep the existing rule;
- 2) restrict the rule to French CIS;
- 3) replace the rule with a requirement for delegatee firms to establish procedures for managing conflicts of interest, regardless of the nationality of the fund.

The Committee would prefer the second solution, but this could easily be circumvented by industry professionals. They could relocate their management entities and their funds in another Member State that does not restrict delegation of CIS management and then market their funds in France under a “product” passport.

Therefore, the second solution must be backed up by another rule to prevent avoidance of this principle: a ban on marketing foreign funds in France if they have delegated financial management to an entity not authorised to manage CIS.

TECHNICAL FACT SHEET 2

Recommendation 2: Enable retail investors to compare all the collective investment schemes marketed in France by means of a mandatory Key Information Document (KID) for each scheme.

OBJECTIVES

The UCITS IV Directive simplifies the disclosure requirements for UCITS vis-à-vis investors before they invest by replacing the simplified prospectus with the Key Information Document (KID). In a much shorter format than the simplified prospectus, the KID contains all the information about the UCITS that the investor needs to make an informed decision.

The AMF must work towards three major objectives when establishing the KID under French law:

- harmonising disclosures to retail investors by all UCITS and non-UCITS marketed in France. Harmonising disclosures should enable investors to easily compare the different CIS on offer in order to make an informed investment choice;
- supporting industry professionals during the implementation of the KID by helping them to draft the documents. Industry professionals may have problems restricting the contents of certain sections of the KID to key information only;
- ensuring a changeover method for existing CIS that enables management companies to produce KIDs well ahead of the deadline set by the European Commission for implementing the document.

STRATEGIC GUIDELINES

The following strategies could be considered:

➤ ***Extend the KIDs to all CIS distributed to retail investors:***

Make KIDs obligatory for all CIS marketed to retail investors is the only way to ensure that these investors can compare the different schemes on offer. However, the range of CIS sold to retail investors includes special funds, such as employee investment funds, venture capital funds and collective real-estate investment schemes, which may not fit into the KID sections defined by the European Regulation. Consideration should therefore be given to adapting the KID to the specific features of these funds.

On the other hand, a KID will be optional when CIS are reserved for professional investors only.

➤ ***Help industry professionals draft KIDs:***

The AMF intends to publish a guide to drafting KIDs. The guide will cover the contents of each section so that industry professionals find it easier to draft KIDs; it will also provide answers to the questions that professionals have already started asking.

The guide will be prepared in conjunction with industry professionals, once the European Regulation setting out the contents of the KID has been published.

➤ **Organise the process for replacing the simplified prospectus with the KID**

○ Timeline:

- for new CIS created on or after 1 July 2011: all general-purpose CIS created on or after this date will have to produce a KID when they are authorised, because the AMF intends to extend this requirement to all CIS marketed in France.
- for existing CIS: non-UCITS may be given extra time to produce KIDs:
 - all schemes covered by the UCITS Directive will be required to produce KIDs by 1 July 2012.
 - for other CIS (i.e. non-UCITS), KIDs may be produced within a reasonable time limit, extending past 1 July 2012.

○ Method for replacing the simplified prospectus with the KID:

In contrast to the method used for the switch to the simplified prospectus, the AMF does not intend to approve the KIDs of existing funds. It wants to leave management companies a large degree of freedom in the process of replacing the simplified prospectus with the KID. However, the AMF will ensure that management companies produce their KIDs in compliance with the regulatory provisions and the AMF's instructions.

That said, the AMF will verify ex post the KIDs that management companies produce for CIS and may request changes where necessary.

The Committee proposes that, in conjunction with industry professionals, the AMF should publish the principles it has adopted for replacing the simplified prospectus with the KID in September 2010.

TECHNICAL FACT SHEET 3

Recommendation 3: Step up oversight of promotional materials prepared for the marketing of collective investment schemes to retail investors, making no distinction between French and foreign funds.

OBJECTIVES

The AMF's primary objective is to protect French investors.

Cross-border opportunities mean that, in addition to French funds managed by French entities, French investors may invest in:

- foreign CIS managed by French or foreign entities under the product passport;
- French CIS managed by foreign entities under the management company passport.

Consequently, supervision of product structures and providers will no longer be able to cover all the schemes marketed in France.

The AMF must consider the changes brought about by the directive to be able to continue ensuring a high level of investor protection, regardless of the CIS being offered to investors (French or foreign schemes managed by entities regulated in France or in other countries). The AMF may attain this objective if its regulation is refocused on supervising the marketing of all CIS sold in France.

STRATEGIC GUIDELINES

The following strategies could be considered:

- Supervise French and foreign CIS sold in France the same way

To ensure harmonised investor protection for all CIS, supervision must apply to all CIS marketed in France (French and foreign schemes managed directly or indirectly by French or foreign entities).

Supervision must be conducted in exactly the same way for both French and foreign funds.

Accordingly, there will be two types of supervision:

- systematic ex ante supervision: this covers CIS aimed at retail investors and whose the strategies, operations and inherent risks, notably those of certain structured funds, may be difficult to understand by those investors. This supervision is carried out when the application for authorisation from a French CIS or the application for authorisation to sell a foreign scheme in France is made.
- non-systematic ex post supervision: the purpose is to focus on mis-selling and to ensure that marketing activities comply with regulations.

- Extend supervision of marketing beyond sales literature

Enhanced supervision of the marketing of CIS calls for the AMF to look at more than just the sales literature. It must look at all marketing activities (targeting, sales pitches, training literature for sellers, how salespersons are paid, distributors' compliance with obligations regarding advice and product appropriateness/suitability), regardless of the person performing these activities (distributor, management company, etc.)

Such supervision could take the following forms:

- closer surveillance of sales literature and internal training documents for salespersons;

- new surveillance tools for the earliest possible detection of potential problems (e.g. mystery shopping to reveal mis-selling);
- supervision of the procedures established by distributors under AMF supervision;
- more systematic supervision of marketing documents for retail products that involve mis-selling risk;
- assessment of the impact of distributor compensation methods on CIS offered to investors.

TECHNICAL FACT SHEET 4

Recommendation 4: Ensure that, for all the collective investment schemes sold in France, investors have access to simple, appropriate disclosure documents on modifications to the schemes in which they have invested, thus allowing them to make informed choices.

OBJECTIVE

Ongoing disclosures to individual investors over the life of a CIS (e.g. in an investor newsletter) are not easy to understand. Investors sometimes have trouble identifying the key information about events and changes affecting the scheme and understanding how such events and changes will affect them. This problem often stems from the fact that key information is lost in a mass of technical data that make the disclosures more complex.

The AMF's objective is to improve information disclosed to investors and make it more understandable so that they can assess whether the product still suits their situation and expectations. This means that the information must be simple, relevant and easy to understand.

STRATEGIC GUIDELINES

The following measures could be taken to improve ongoing disclosures to CIS investors:

➤ ***Harmonise ongoing disclosure rules for all CIS marketed in France:***

The same investor information requirements should apply to all CIS marketed and subscribed in France.

The AMF proposes to compile and publish a document containing all disclosure rules applying to CIS marketed in France in order to facilitate awareness of the rules applicable to management companies managing units or shares in funds that have been subscribed in France.

The document will be published in French and English so that foreign entities marketing CIS in France are aware of French investor information rules, thus facilitating compliance.

➤ ***Target ongoing disclosures more effectively:***

By definition, the KID contains all key information about a CIS. Accordingly, changes affecting a section of this document should be considered to be material and to require a specific disclosure to each investor. However, changes to some of the items in the KID do not have a major impact on investors (e.g. changes to database codes). Consequently, disclosures to individual investors should be restricted to changes in the CIS that affect one of the key items covered by the KID and, more specifically, the fund's risk profile.

Disclosure of other types of changes can be made using technological tools such as e-mail or websites.

➤ ***Develop "standard content" for investor information:***

Establishing standard content for disclosures would be an effective way of ensuring that investor information is simple, understandable and relevant.

The standard content could focus on key information that enables investors to understand how changes to the CIS will affect their interests, as well as any options available to them.

The information could be divided into three parts:

1. The operation: this section will describe the nature and date of the operation and specify the entity that authorised it (AMF or another supervisory authority in the case of a foreign collective investment scheme). It could also indicate whether investors have the option of redeeming their units or shares free of charge.
2. Changes: this section could focus on the changes that affect the risk profile of the fund. More specifically, it could explain whether the risk/return profile has been altered.

The section could also contain a comparison table of the altered items, without any additional literal explanation.

3. Decision-making information: in all cases, this section could state:
 - that investors need to read the KID, which could be enclosed (in the event of a merger),
 - where investors can access the KID at all times (web link),
 - that all investors should maintain regular contact with their investment advisers.

This section could also indicate the three options open to investors as a result of the change:

- if the change suits investors, they do not need to do anything,
- if the change does not suit them, investors are entitled to redeem their units or shares. They may receive advice on reinvesting their assets,
- if investors cannot make up their minds, they need to contact their advisers.

TECHNICAL FACT SHEET 5

Recommendation 5: Define the business of distributing financial instruments and harmonise the obligations that go along with this activity, regardless of the distributor's status.

OBJECTIVE

The role of distributors, who are key players in the marketing process, has not been clearly defined. This lack of clarity stems more specifically from the variety of legal forms that distributors of financial instruments can take (e.g. direct marketers working for banks or financial firms, financial investment advisers, investment services providers). The variety of legal forms seriously undermines investor protection, since the distributors' obligations and liability may vary from one form to another.

Furthermore, under current regulations, there is some uncertainty about the respective obligations of distributors and producers. This uncertainty is also harmful for investors, who are often unable to identify who is liable in the event of problems.

Consequently, the respective obligations of producers and distributors need to be clarified to improve investor protection.

STRATEGIC GUIDELINES

The following measures could clarify the distributors' obligations:

➤ ***Organise an effort to clarify regulations under existing law:***

Clarification should involve:

- an inventory of legal forms or operating modes for marketing financial instruments (direct marketers, insurance brokers, insurance companies providing investment services without authorisation, financial investment advisers, third-party marketers, sales agents, tied agents, investment services providers offering advice, order reception and transmission, trading facilities, etc.)
- identification of the actual responsibilities of each player with regard to producers and investors, from the first contact to post-investment customer service;
- an educational presentation of the applicable rules for foreign firms seeking to market CIS in France directly or indirectly.

➤ ***Subject distributors to the same investor assessment and disclosure requirements, at point of sale or when material changes are made to a CIS***

Changes to certain aspects of a CIS may alter its risk-return profile or investment horizon so that it no longer corresponds to the investor's initial objectives, needs and expectations when he or she subscribed to the scheme. In this case, it seems logical to treat the transformation of the CIS as a new investment.

In such a situation, the distributor should be required to disclose all of the characteristics of the transformed CIS scheme to the investor, as it would for a new subscription, and it should answer any request for advice from the investor by assessing the suitability and appropriateness of the new product for the investor.

➤ ***Promote regulatory action and/or policies:***

This action should make it possible to:

- define what is meant by marketing;
- stipulate the distributor's obligations to the investor after the product has been subscribed;
- clarify the organisation of the legal status of financial investment advisers and direct marketers;
- enable the investor to understand clearly who is responsible for the marketing of the product as soon as the first contact is made;
- identify the clauses that must be included in any agreement between the producer and the distributor, in addition to their respective obligations with regard to marketing documents (existing agreement¹), such as:
 - o conditions for using active marketing methods;
 - o responsibility for implementing MiFID requirements and, more specifically, the customer assessment;
 - o conditions under which the producer may be called upon to provide training for distributors;
 - o disclosure requirements incumbent on the producer relative to the distributor when a product is launched, and ongoing disclosure requirements;
 - o the distributor's specific obligations to the investor relating to regular compensation as long as the investor maintains the investment in the product in question.

➤ **Analyse other distribution issues in conjunction with industry professionals**

This analysis should deal with the specific issues raised by the facilities used by financial investment advisers in particular (transparency of compensation, knowledge of end customers, chain of responsibility).

¹ Decree 2010-40 of 11 January 2010 relating to agreements between producers and distributors regarding the marketing of financial instruments and life insurance products.

TECHNICAL FACT SHEET 6

Recommendation 6: Adopt regulations and administrative procedures that are conducive to the establishment and expansion of management companies in France.

1. Facilitate the creation of management companies in France

OBJECTIVES

Asset management professionals consider the authorisation procedure for French management companies to be burdensome because of the level of detail required in the information to be provided in their programme of operations.

Promoting the creation and growth of management companies in France calls for a speedy, simple and predictable authorisation procedure. An authorisation procedure focused on the information needed to analyse the risks created by the operations should make it possible to attain this objective. It would also avoid unnecessary administrative expenses.

Furthermore, growth could be impeded by the ongoing administrative burden on management companies stemming from AMF filing requirements and the time required to obtain prior authorisation from the regulator when necessary before taking up a new business activity. The AMF therefore needs to ease this administrative constraint as much as possible.

STRATEGIC GUIDELINES

Strategies to facilitate the creation of management companies and reduce administrative burdens could include:

- **Refocus programmes of operations on the information needed to assess management companies' risk management, without jeopardising the principle of the programme of operations, which is a key element in the French regulatory system**

It is important to uphold the principle of drafting a programme of operations setting out the scope of the management company's operations. This document is a key tool for two reasons. First, it enables the AMF to ensure that the management company is capable of managing the risks associated with its operations. Second, it substantially reduces the time needed to authorise CIS by allowing the AMF to focus solely on the characteristics of the product and investor information, since it already has thorough knowledge of the management company.

However, the programme of operations could be simplified by restricting it to information that enables the AMF to:

- ensure that the management company's structure, resources and control systems enable it to manage operation-related risks. The objective is to drop the current approach, which consists in granting prior approval whenever the management company wants to implement a new strategy or a new type of fund, and to replace it with the approval of a structure for organising and carrying out operations. As long as the management company can show that it has the organisational structures and resources to identify and manage the risks associated with the implementation of new strategies and new types of funds, it would be granted authorisation for broad classes of operations (e.g. "complex derivatives"), without having to apply for prior approval for each use of a new type of complex derivative. The AMF's supervision will verify ex post the effectiveness of the organisational structures implemented by the company;
- pay special attention to management companies that develop complex strategies using investment funds aimed at retail investors. In this case, depending on the degree of structure in the management

company's control system, the AMF may ask for further information about risk management. On the other hand, the AMF will ask for less information on this point when investment funds using complex strategies are aimed solely at professional investors, which are able to assess the management company's risk control on their own.

➤ **Ease the administrative burden on management companies**

Simplifying the programme of operations entails eliminating information that is not helpful to the AMF when assessing the management company's risk control capability. Simplification will therefore reduce the extent and frequency of programme of operation updates.

The AMF must also continue its work to simplify administrative requirements by eliminating any disclosure requirements for management companies that are irrelevant to its supervisory tasks. For example, the requirement to inform the AMF about a change of custody account keepers could be lifted.

2. Adopt a regulatory framework that promotes the growth of management companies in France

OBJECTIVE

The French regulatory framework is not always suitable to every method of financial management.

To promote the growth of France's asset management industry, the French regulatory system needs to consider the different organisational structures adopted by management companies and the constraints involved in their business, while ensuring investor protection.

STRATEGIC GUIDELINES

➤ **Facilitate delegation of the valuation function**

Where a company delegates fund valuation to a third party, it is required to conduct an audit to verify that the third party is performing its task properly. Such audits can prove difficult, especially where the difference in size between the two entities is so great that, in practice, the management company is unable to verify the work of the valuation delegatee. Moreover, the valuation delegatee is in a position where it is audited by all the companies it serves in this capacity. Requiring all these companies to check its work does not necessarily make the system safer or more effective.

It would be better for management companies and valuation delegates to use common standards covering their respective duties, best practices and rights and obligations in order to facilitate such verifications. These standards should have sufficiently authoritative status so that, if the valuation delegatee undertakes to comply with them, management companies would be able to modulate their audits. The precise legal framework for implementing this measure will have to be determined in conjunction with the stakeholders to avoid incurring more expenses than under the existing system, while still ensuring the operational effectiveness of the new system.

Furthermore, the legal framework will have no effect whatsoever on the management company's liability for the valuation of the CIS it manages.

In addition, it would be advisable to clarify the rules regarding the valuation process that a foreign valuation delegatee must comply with when working for a French CIS (double-entry book-keeping and, accounting standards more generally, frequency of NAV publications and dual valuation, etc.) to avoid any distortion of competition with other financial centres.

➤ **Consider the constraints on groups of companies**

Some management companies are organised as corporate groups, with subsidiaries or affiliates that may be specialised and located in different countries. Some rules that are readily applicable to independent companies

may be difficult to apply to a group, for example because the main executive bodies are centralised at the parent company. To comply with the rules, these companies resort to complex legal arrangements which, *prima facie*, make it possible to meet the requirements but which, in practice, do not correspond to the way they actually operate.

For example, the rules on intra-group delegation and the policies on senior managers should be adapted to the specific organisation of such structures as follows:

- Executives: adapt the rules on management company executives to groups, so that one person can be considered to be a full-time executive in several entities. The executive's working hours will not be assessed at the level of each entity in the group but at the group level, meaning that one person can be named as an executive in three entities and still be deemed to be a full-time executive in each. The changes in the AMF's position on executives in corporate groups must be backed up by vigilance with regard to the procedures for managing conflicts of interest (Chinese walls between commercial and investment banking, connection between executive functions and acting as a financial investment adviser, etc.);
- Delegation of financial management: eliminate the requirement for a balance between delegated management and direct management, and replace it with a requirement that a management company have real resources and material operations (management companies must not be a letterbox). Groups should also be allowed greater flexibility in their organisational structures in order to give due consideration to their specific features. This means that in groups organised according to areas of expertise, the French management company could rely on a group audit system, without duplicating the audits carried out at the group level.

➤ **Enhance the possibilities for management companies to call on external expertise**

Expanding asset management operations may require the help of external experts, who are not necessarily located inside the European Economic Area.

This assistance may take several different forms. The following activities should be allowed in order to enhance French management companies' possibilities for calling on external expertise:

- provision of advice to management companies by third parties: advice provided to a management company should not be considered to be personal recommendations under MiFID (unless the various parties agree otherwise) so that any person, regardless of status or home country, is able to provide advice to a management company about financial instruments. Such advice would not be investment advice under the terms of Article D321-1 of the Monetary and Financial Code and Article 314-43 et seq. of the AMF General Regulation.
- consideration of customers' wishes in the management company's investment decision-making: the rules governing customers' ability to influence management decisions could be made more flexible in the case of dedicated funds or contractual funds, subject to legal feasibility and compliance with the regulations applying to investors, especially institutional ones. The customers' influence could take different forms, such as a right to veto certain investment decisions. More flexible rules, however, will require supervision to ensure equal treatment of investors in funds with more than one subscriber.
- facilitate delegation of financial management: extend the possibilities for delegation by moving from a "know-how" approach with regard to the delegated function to an approach based on controlling the risks associated with delegated management. The management company must add value in the process. It must be able to select the delegatee firm and oversee the strategies it implements.

➤ **Extend the range of services that asset management companies are allowed to provide:**

Customers of management companies sometimes want to invest in products that can be substituted for CIS, such as structured EMTNs. In some cases, the management companies will need to be authorised to provide placement services in order to distribute such products.

Management companies that are not subject to the UCITS Directive are not allowed to provide placement services in France, even though there is nothing in European legislation to prevent them from doing so and the provision of such services is sometimes necessary for the development of the management companies' operations.

The so-called "Type 2" management companies in France, which are covered by MiFID, should be allowed, subject to certain conditions aimed at preventing conflicts of interest, to offer placing without firm commitment.

Even though the UCITS Directive does not allow UCITS management companies (the so-called "Type 1" management companies in France) to provide placing services, a discussion could be held on the extent to which such companies could engage in similar operations, in compliance with European legislation.

However, if management companies are allowed to market products substitutable for CIS to their customers, there should be a clause banning them from providing placing services for such substitute products in discretionary management mandates and in the CIS under their management.

TECHNICAL FACT SHEET 7

Recommendation 7: Rationalise and simplify the range of collective investment schemes sold in France under French law to make it clearer and more comprehensible to investors and to French and foreign professionals.

OBJECTIVE

The clearer and more understandable the regulatory system, the more dynamic the French asset management industry will be. With more than 15 legal types of CIS, the French asset management industry is complex for both French investors and foreign investors and industry professionals.

Rationalising and simplifying the supply of French CIS to make it more understandable would greatly enhance the attractiveness of the French financial market.

STRATEGIC GUIDELINES

Simplifying and clarifying the regulations governing the types of French investment funds to make them more understandable could be achieved by rationalising the range of funds on offer under French law:

- according to the target customers of the funds: funds for all investors and those for specific categories of investors;
- according to the requirements for creating funds.

This would lead to three categories of investment funds:

- funds for the general public, which are subject to authorisation;
- funds for specific categories of investors, which require authorisation;
- funds restricted to certain categories of investors, which are subject to a notification procedure.

The rules applicable to these three categories of funds must consider the type of investment: venture capital, real estate, transferable securities, funds of hedge funds.

TECHNICAL FACT SHEET 8

Recommendation 8: Bring France's rules into line with EU standards for the authorisation of collective investment schemes and the publication of fees payable by investors.

OBJECTIVE

Regulations must be adopted to ensure that French funds are fully competitive with other countries' funds in order to enhance the competitiveness of the French financial market and increase the number of CIS domiciled in France.

French CIS will be fully competitive if the regulations applying to them are consistent with European standards, as long as these standards do not jeopardise investor protection.

The Asset Management Stakeholders' Committee identified two areas where the regulations applying to French CIS could undermine the competitiveness of French funds: the collective investment scheme authorisation requirements and the rules governing the publication of fees charged to investors.

It is important, therefore, to make the necessary amendments to regulations in order to eliminate any distortion of competition between French CIS and those created in other Member States.

STRATEGIC GUIDELINES

1. CIS authorisation rules

The following amendments could be made to the regulations governing the authorisation of CIS:

➤ ***Allow other legal forms of investment companies***

SICAVs may only be incorporated as public limited liability companies (*société anonyme*). The applicable governance rules may not suit the specific nature of CIS. Consequently, French management companies tend mainly to set up investment funds with contractual form, but the legal rules applying to such funds may not be easily understandable for foreign customers.

And yet, French law provides for companies with more flexible operating rules, such as simplified joint stock companies (*société par actions simplifiée*). The operating rules for this type of company, which are set out chiefly in the articles of association, would make it possible to overcome the constraints of public limited liability companies that make French SICAVs less attractive.

However, the AMF will have to specify the rules for creating a SICAV in the form of a simplified joint stock company in order to reconcile the flexibility of this legal form with the regulatory constraints applying to CIS.

➤ ***Consider broadening the range of management techniques used by French CIS***

The AMF should ensure that the authorisation requirements for French CIS are in line with those imposed by its counterparts in other countries, as long as this approach is consistent with the principle of investor protection.

This would call for a careful review of all of the management strategies and techniques used in other Member States that may be consistent with the provisions of the UCITS Directive in order to allow French CIS to use these techniques, as long as they are compatible with a high level of investor protection.

Broadening the range of allowable management techniques must be backed up by proper disclosure to investors of the potential risks associated with these new methods. Some of these techniques involve risks that may be difficult for investors to identify or understand.

➤ ***Eliminate the accounting profit requirement for dividend distribution***

French CIS are permitted to distribute their accounting profit only, whereas this restriction does not apply in other Member States. This accounting difference undermines the competitiveness of French funds.

The accounting and tax measures applying to French funds with regard to income distribution should be brought into line with the relevant rules in other Member States.

2. Align the presentation of fees charged to fund investors with European standards

Management companies are currently required to present the following in a CIS prospectus:

- 4) the total expense ratio (TER), i.e. the percentage of expenses (except transaction fees) deducted from scheme assets in the previous year. In addition to administrative expenses, the TER includes turnover commissions, expenses on underlying funds (for funds of funds) and outperformance fees;
- 5) the maximum expense ratio, including management fees and operating expenses.

Presentation of the TER has become a European standard and should be enshrined in the future European Regulation on the KID.

On the other hand, presentation of the maximum operating and management expense ratio has not attained its objective in practice. It was supposed to ensure fully transparency for investors with regard to the total expenses charged to them for their investment. This failure can be explained by the way that investors interpret this ratio. They tend to think that the maximum ratio indicated refers to management fees only.

This interpretation is bad for the image of French funds, since it means that they are wrongly deemed to be more expensive than funds from other Member States, whose practices are in line with European standards. Therefore, the AMF should bring its rules into line with these standards.

Once the regulations have been amended, the prospectus will indicate:

- 6) the TER, which corresponds to the percentage of all expenses (except transaction fees) deducted from scheme assets in the previous year, or, for new funds, the expenses forecast for the coming year. Therefore, in addition to management fees, this TER includes administrative expenses, turnover commissions, and expenses on underlying funds (for funds of funds);
- 7) outperformance fees;
- 8) maximum management fees.

However, no maximum ratio will be applied to operating expenses (depository, auditors, etc.), which will be indicated ex post or as a flat fee in the KID.

TECHNICAL FACT SHEET 9

Recommendation 9: Promote the domiciliation of asset management operations in France by improving the dissemination of AMF's positions and providing one-stop service for all European passport applications.

OBJECTIVE

The UCITS IV Directive streamlines the notification procedure for marketing UCITS considerably and brings it into line with the procedure for the management company passport. To streamline procedures, notification of the competent authority in the host country, which has so far been the responsibility of the management company, will now fall to the competent authority of the UCITS' home country.

This means that the AMF will have to implement efficient procedures and organisational structures to streamline the notification procedure for "outward" product and management company passports in order to encourage asset management professionals based in France to use these "outward" passports.

Furthermore, the AMF should facilitate dissemination of its positions so that the asset management industry can be aware of these AMF's positions and apply them thoroughly.

STRATEGIC GUIDELINES

- ***The AMF will have to accomplish the following in order to adopt measures and organisational structures that facilitate the use of passports:***
 - facilitate the procedures for industry professionals who wish to obtain "outward" passports for French CIS and their management business or do cross-border business in another Member State by providing them with all the information needed to undertake the passport procedure (educational guides, etc.) and by providing them with any necessary support in their dealings with other regulators;
 - establish a one-stop service at the AMF for rapid processing of applications with the goal of achieving processing times that are significantly shorter than the deadlines set out in the UCITS IV Directive;
 - develop online filing of passport applications, consistent with the online filing of CIS authorisation applications and online generation of attestations certifying compliance with the UCITS directive through the management companies' extranet.

- **Facilitating AMF's positions dissemination calls for:**
 - continued publication of professional guides, with particular emphasis on the regulations applying to management companies and distribution operations, in keeping with the AMF's position dissemination efforts already undertaken for CIS.
 - improving the AMF website to facilitate access to regulations and positions.

TECHNICAL FACT SHEET 10

Recommendation 10: Give distributors, investors - particularly foreign investors - and order collectors access to standardised and comprehensive information about French collective investment schemes marketed outside France.

OBJECTIVES

As the cross-border distribution of funds increases, it is crucial for the national and international visibility of French funds that investors and distributors based in France and other countries should have access to all the operational information about French funds in a standardised, centralised form.

The work carried out under the auspices of EFAMA leading to the development of the concept of the Fund Processing Passport (FPP) has met this objective by providing all the technical and operational information needed for subscribing or redeeming CIS shares or units in a standardised document.

Despite the web portal opened by the AFG providing simple links to the websites of management companies where the FPPs are posted, the development of FPPs in France has fallen short of expectations. So far, only one link has been posted, which is conspicuously inadequate. And yet, the approach taken is not in question, since its value is widely recognised. It marks a first step towards the medium-term development of a centralised product reference database that could be a centralised repository of comprehensive information about the funds, updated in real time and legally binding. Therefore, this approach needs to be continued and developed further.

STRATEGIC GUIDELINES

The following measures could facilitate cross-border fund distribution and enhance the visibility of French funds for investors, and more specifically, foreign investors:

- ***Require all French funds likely to be marketed in other countries to have a Fund Processing Passport***
- ***Set up a product reference database in the longer term***

The discussions on establishing a product reference database could take place as part of a joint initiative by several European countries aimed at setting up a pan-European fund database. The information in the database should be comprehensive, updated in real time and legally binding.

The suggestion is to set up a small stakeholders' group with the task of making proposals to the French authorities for practical implementation of the various reforms.

TECHNICAL FACT SHEET 11

Recommendation 11: Provide management companies with better information about the investor base of the funds under their management, notably through systematic order marking.

OBJECTIVE

Management companies often have inadequate information about the investor base of the funds under their management when it comes to data on end-institutional investors or data on their distribution network. Such networks may include chains of several successive distributors. This results in two types of problems for management companies: first their knowledge of their investors is inadequate, making it harder to tailor their management to these investors' needs; secondly, they run into problems managing the fees and commissions paid to distributors.

A market-wide order marking initiative would make it possible in ideal situations to trace these data from the end-investor, when it is an institutional investor, to the last distributor in the chain.

In practice, however, the order marking technique still has several shortcomings. This is because not all distributors have been identified and because the transfer of the CIS shares or units held by a given investor from one custody account keeper to another cannot be traced yet.

STRATEGY

- ***Mark all orders, identifying the remaining inadequacies of the system specifically so that remedial measures can be taken. In the longer term, a reference database of distributors could also be considered***

The suggestion is to set up a small stakeholders' group with the task of making proposals to the French authorities for practical implementation of the various reforms.

TECHNICAL FACT SHEET 12

Recommendation 12: Promote direct ordering under a secure legal framework in which foreign investors and distributors can deal directly with the management company, thereby implementing a system similar to the transfer agent system.

OBJECTIVES

French and foreign management companies, investors and distributors have a relatively poor grasp of the mechanisms for handling CIS subscription and redemption orders. This is hindering the development of cross-border fund distribution. Consequently, appropriate educational and marketing campaigns are proposed to overcome this hurdle.

Furthermore, the French model of investors' base accounting, which relies on the infrastructure of the central depository, has fallen short in specific situations involving cross-border distribution. This has happened, for example, when the order collector is unable to accept an order from an unfamiliar intermediary or when the investor refuses to follow the conventional order transmission process, which is excessively cumbersome. It is therefore necessary to develop a second order transmission channel based on direct dealings between investors or distributors and the management company, so that an investor or a distributor can send an order directly to the collector, with the possibility of making the relevant entry in the CIS register. This practice would bring the French system into line with systems based on a transfer agent, which have proven to be efficient, without giving up the legal certainty provided by French securities law.

STRATEGIC GUIDELINES

The following solutions could be considered for enhancing awareness of French funds and the efficiency of the French investors' base accounting system, as well as for allowing foreign investors and distributors to deal directly with management companies:

- ***Develop appropriate educational and marketing campaigns***

The AMF and industry associations could work together to develop educational and market campaigns providing in-depth explanations aimed at French and foreign institutional investors, management companies and distributors in order to promote the efficiency, legal certainty and technical security of the French system. These campaigns could take the form of clearly written documents in French and English illustrated with suitable diagrams and charts.

- ***Develop direct orders***

The development of direct orders will require the AMF to clarify its positions in this matter so that investors can use this order transmission circuit as needed.

The suggestion is to set up a small stakeholders' group with the task of making proposals to the French authorities for practical implementation of the various reforms.

TECHNICAL FACT SHEET 13

Recommendation 13: Take appropriate regulatory and operational provisions to minimise the risk of losses resulting from payment defaults on subscriptions to collective investment scheme shares or units. Pass any loss or gain to the collective investment schemes, as is common practice in other countries.

OBJECTIVES

Some foreign investors are currently unable to invest in French CIS because order collectors do not accept orders transmitted by unfamiliar financial intermediaries. This is because the collectors do not want to incur the potential financial risk of payment default by the subscribing investor. In practice, the CIS manager invests when a subscription order is received, even though the payment for the order has not yet been made. According to industry professionals, this practice is favourable for investors, who are able to take positions more swiftly. If the new subscriber defaults, though, the fund manager will have to reverse the position, which could result in losses in a bear market. The proposal is to follow the example of other countries and charge potential losses to funds, in the same way as gains resulting from subscriptions followed by a payment default are currently credited to funds. This would overcome order collectors' reluctance to accept certain subscriptions. However, appropriate regulatory and operational measures would have to be established to secure the order transmission channel and minimise the risk of such occurrences.

STRATEGIC GUIDELINES

It is necessary to avoid the situation where order collectors refuse investors' subscription orders because they are unfamiliar with the investors, distributors or intermediaries that transmit them. The strategy proposed is as follows:

- ***Charge losses incurred as a result of payment defaults on subscriptions to the CIS***

Given the exceptional nature of such defaults and the fact that the practice of investing the proceeds from subscriptions before payment is received is to the advantage of the investors, the AMF's policies could accept that the CIS itself incurs these risks, as is the case in other countries.

TECHNICAL FACT SHEET 14

Recommendation 14: Raise awareness of the comparative advantages of France's fund management industry through international promotional campaigns conducted in partnership with the entire French finance community.

OBJECTIVE

Sales of French funds in other countries have been restricted primarily because of a lack of international promotion of French products and regulations. Industry groups do initiate campaigns to promote France's finance industry, but these campaigns have failed to promote France as an attractive asset management and investment destination for international industry professionals and investors.

The effectiveness of such promotion requires a strong commitment from all asset management stakeholders and coordinated action for successful targeting, content and timing of promotional campaigns.

STRATEGIC GUIDELINES

The following measures could be considered to enhance foreign investors' and industry professionals' awareness of France's finance industry:

➤ ***Mobilise all asset management stakeholders***

Successful promotion of the French finance industry calls for harnessing the efforts of all asset management stakeholders (management companies, especially the larger ones and those planning to develop their "export" business, depositaries, administrators and accountants, consultants, law firms, industry associations, etc.)

➤ ***Launch a promotional campaign as soon as possible***

France is not clearly identified as a financial management player on the international stage. European industry professionals are already planning for the impact that the UCITS IV Directive will have on the organisation and development of their business. Therefore, it seems crucial to start promoting the French finance industry so that France can be identified as a source of attractive opportunities. Furthermore, there is little awareness in other countries of the existing advantages of the French asset management industry and its regulatory framework in terms of legal certainty. Therefore, its international promotion should be more ambitious.

Promotion should focus on:

- the advantages of France's existing regulatory framework,
- the discussions undertaken by the AMF to modernise and improve France's finance environment and make it even more competitive.

➤ ***Reshape and step up the promotion of France's finance environment following the adoption of the recommendations made in this report***

All the reforms proposed in this report should be implemented by 1 July 2011 (the deadline for implementing the UCITS IV Directive) to ensure that France's finance industry is fully competitive at that time.

Prior to that date, promotion of the French environment must be reshaped and stepped up to raise awareness of the changes made to the regulatory framework for France's asset management industry.

The promotional campaigns should explain how France's finance environment is:

- modern, highly competitive and very advantageous for asset management professionals;
- more welcoming for asset management companies and products, along with other financial business;
- more open and accessible to foreign investors.

➤ ***Launch an industry-wide initiative to generate, organise and develop promotional campaigns:***

Successful promotion of France's financial centre calls for the public authorities to play a driving role and for government oversight.

An initiative involving all asset management stakeholders, overseen by public authorities and headlined by a leading figure from France's asset management industry needs to be launched very soon in order to:

- set out the practical steps in the promotional campaign (publications, conferences, road shows, etc.), start a campaign immediately highlighting the current advantages of France's asset management industry, to be followed by a campaign highlighting the new regulations starting in July 2011;
- select the media and resources (including funding) to be used for these campaigns;
- set a suitable timetable for the campaign;
- mobilise all asset management stakeholders to take part in the campaign.

Annex 2: Areas for discussion on the legal environment other than financial regulation: tax and employment law

1. Employment-law environment

FINDING

Members of the committee were emphatic that France's employment law is not always suited to the fluctuations of the asset management business.

Members also stressed that it can be difficult to employ foreign personnel because the process of satisfying the administrative formalities for visas can be long and complicated.

SUGGESTION

Members of the committee call on the French authorities to reconsider certain aspects of employment law to accommodate the special characteristics of asset management companies.

2. Tax environment

FINDING

The members pointed out that French management companies face particularly heavy tax pressure. The high overall tax burden results mainly from the combination of the tax on corporate income, the tax on wages, welfare contributions, the new taxes (based on value added) adopted to replace the business tax, and the social charges based on wages.

The members of the committee also said that the appeal of French CIS to foreign investors in particular is diminished by the withholding tax that applies to income received and paid by these entities:

- in countries in which the entities are likely to invest: Because CIS are exempt from corporate income tax, these entities generally cannot qualify as residents for tax treaty purposes and are thus denied the benefits of the tax treaties (reduction or elimination of tax withholding). In some cases, however, they may be able to benefit from more favourable provisions, such as tax exemptions, under domestic law.
- in France, on income paid out by the fund: Income paid out by CIS to nonresidents is subject to withholding tax in France at a relatively high rate as required under ordinary law. It should be noted, though, that this applies only to distributions by SICAVs (regardless of the composition of their assets) and distributions by FCPs invested in French equities. The mandatory flat-rate withholding tax on interest payments has been eliminated with effect from 1 March 2010 (except for payments into a Non-Cooperative State or Territory, which are subject to 50% withholding).

Lastly, the members identified the high personal income tax rate combined with heavy social charges as a factor that reduces the appeal of the French financial centre to industry players.

SUGGESTIONS

The Committee suggests that certain tax rules be revised in ways that would be revenue-neutral or even revenue-enhancing for governments.

➤ *The wage tax*

The wage tax weighs heavily on salaries paid by management companies established in France.

This tax expense comes on top of the expense that nondeductible VAT represents. As it is, the wage tax is owed by enterprises that do not recover VAT (or recover it only partially), and there is no mechanism for offsetting the wage tax by deducting input tax, as there is with VAT. These firms are thus hit twice, by being unable to deduct VAT on what they purchase and by owing another tax based on what they pay their employees.

Eliminating this double burden would provide a strong incentive to keep fund management teams in France (and to move staff based elsewhere back to France). The proposed measure would consist in eliminating the wage tax. In view of the budget impact, a phase-out would be in order, as was done with the financial institution tax (CIF) and more recently with the annual flat-rate tax (IFA).

An alternative solution would consist either in establishing a mechanism to cap the base of the wage tax or in incorporating the amount of the wage tax into an overall cap on tax payable by a legal entity.

➤ ***Withholding taxes affecting French CIS***

The members of the committee are emphatic that France's attractiveness as a financial centre could be enhanced by:

- eliminating all tax withholdings on income distributed by French CIS. Except for certain special coupon payments, all income distributed by French CIS is potentially liable to withholding tax if paid to persons not resident in France for tax purposes – despite the fact that there are numerous cases in which withholding can be reduced or eliminated under tax treaties to which France is a party.

Foreign investors are generally put off by having to find out whether withholding tax may apply, to determine whether they are eligible for an exemption, and most of all, to supply documents to claim exemption or obtain a tax refund.

Besides this deterrent effect, immediately payable withholding tax causes a cash flow disadvantage even where the tax is subsequently refundable under a tax treaty.

One solution could be to eliminate withholding tax on income distributed by French CIS, as has already been done for CIS formed in some other Member States. In this regard, it should be noted that last March France received a 'reasoned opinion'¹ from the European Commission asking it to change its rules on the treatment of the dividends paid to European Union investment funds, on the grounds that France's rules restrict the free movement of capital. If France does not respond satisfactorily, the Commission would have to take the matter to the European Community Court of Justice.

- reducing withholding tax on income received by French CIS. French funds too often have difficulty in claiming the benefit of tax treaties to which France is a party. As a consequence, management companies are forced either to restrict their investment universe or to accept a lower return for their fund by bearing withholding tax on the foreign assets they choose to invest in.

One solution could be to pursue further amendment of existing tax treaties and take the special situation of French CIS into account in tax treaties currently being negotiated, which will of course take several years. It must be borne in mind, though, that if application of a tax treaty is dependent on supplying a list of investors, this is not feasible at this time for funds accepted for clearing by Euroclear.

This issue is currently under consideration within the OECD, as part of the 'implementation package' for claiming treaty benefits, and a report has been submitted for consultation among Member States.

➤ ***Tax rules applicable to fund managers***

The members of the committee advanced the view that current tax rules discourage the fund's managing partners from investing in their own funds. But this ought to be encouraged, for two reasons:

- Increasingly, investors in the fund demand it, as a way of aligning managers' interests with those of investors and ensuring equal treatment in the fund.
- It is a way of increasing assets under management in the fund and reaching critical mass more quickly.

¹ News release of the European Commission dated 18 March 2010 (IP/10/300).

Lastly, a measure of this kind would be consistent with the discussions now under way on how management companies are to be compensated for managing alternative funds and, more broadly, with the rules for credit institutions regarding pay and bonuses. Those rules ultimately recommend a system of deferred compensation tied to the firm's performance and the employee's performance.

To encourage managing partners to invest in their own funds, the solution might be to institute a tax-favoured regime under which managers' pay would not be taxed or subject to social charges to the extent that is immediately invested, via cash subscription, in ordinary shares or units of the funds that they manage. In terms of aligning incentives and building loyalty, this arrangement could have the same kind of effect as share options and share grants at listed companies (mechanisms that are ill-suited to an asset management world made up of privately traded firms with illiquid shares).

This could be organised in two different ways:

- The management company could pay variable compensation to the managing partners, who would immediately reinvest all or part of it in ordinary shares or units of the fund that they manage.
- The management company could subscribe to ordinary shares or units of the fund (using cash received as management fees or performance fees) and then pay the managing partners in kind by transferring these shares or units.

Under any arrangement, to be eligible for the special tax regime, the manager would have to maintain the investment in fund shares or units for the minimum holding period set by law. This could be the recommended holding period in the fund or a minimum period of, for example, five years.

➤ ***Extending the tax regime for carried interest shares to French CIS***

At present, only French venture capital investment vehicles (FCPR, FCPI, FIP and SCR) and foreign entities with the same investment purpose can issue shares eligible for the special carried-interest regime. Carried interest shares are taxed as capital gains when sold rather than as ordinary income when received.

The following could be envisaged:

- extending the possibility of issuing carried interest shares to all CIS, including general-purpose funds. Carried interest shares would entitle the holder to a fraction of outperformance at general funds and a fraction of performance at ARIA and contractual funds.
- extending the favourable tax regime for carried interest shares to CIS shares and units issued under the two conditions set forth below.
- making eligibility for this regime conditional on a meaningful equity investment in the fund on the part of employees of the management company (X months of salary, for example).
- making eligibility for this regime conditional on holding that investment in the fund for a minimum period set by law, which could be the recommended investment period in the fund or in another fund of the same management company, but not less than five years.

Annex 3: Members of the UCITS IV Cross-Industry Committee and the four focus groups

Lead Committee chaired by Jacques Delmas-Marsalet and Jean-Pierre Hellebuyck

- Paris Europlace
Arnaud de Bresson, Managing Director
- ACAM
Antoine Mantel, Secretary General
- Commission Bancaire
Danièle Nouy, Secretary General
- Treasury Department
Paul Esmein
- AF2I
Etienne Stofer (or Philippe Haudeville, SG)
- Guillaume Prache
- Bernard Coupez
- AXA AM
Dominique Carrel-Billiard,
Chief Executive Officer
- DNCA
Philippe De Vecchi,
Deputy Secretary General and Chief
Compliance Officer
- Lyxor
Alain Dubois, Chairman of the Executive
Board
- Natixis Asset Management
Pascal Voisin, Chief Executive Officer
- State Street
Raphael Remond,
Chairman and Managing Director
- Cabinet Sellam
Patrick Sellam
- CACEIS
Anne Landier-Juglar,
Compliance Officer
- BNP-Paribas
Marianne Attal, Compliance Officer
- AFG
Henri de la Porte Du Theil, Chairman
or Pierre Bollon, Chief Executive
- AFTI
Karima Lachgar, Chief Executive

Group 1: Asset Management Industry Promotion

- Carmignac Gestion
Pascale Guillier
- HSBC Global Asset Management France
Didier Deléage
- Neulize OBC Asset Management
Stéphane Corsaletti
- Dexia Asset Management
Pierre Ernst
- Robeco Gestions
Ali Ould-Rouis ou Frédéric Beugin
- UFG
Xavier Lépine
- Montpensier Finance
Guillaume Dard
- Cabinet Gide, Loyrette et Nouel
Stéphane Puel

- Allen & Overy
Brice Henry
- CMS Bureau Francis Lefebvre
Jérôme Soutour
- AFG
Stéphane Janin
- AFTI
Bruno Prigent
- FBF
Jean Tricou
- State Street Global Advisors France
Raphael Remond
- CACEIS
Eric Derobert
- Natixis Asset Management
Philippe Zaouati
- Paris Europlace
Arnaud de Bresson
- Treasury Department
Paul Esmein

Group 2: Fund Regulation and Marketing

- CM-CIC Asset Management
William Margoline
- CAAM Group
Loic Legouet
- La Banque Postale
Gabriel Gire
- CIP
Jean-Pierre Corbel
- AVIVA Investors France
- BNP Paribas
Bernard Gaume
- AFG
Jérôme Abisset
- FBF
Jean Tricou
- AFTI
Anita Metzger
- Natixis Asset Management
Jean-Christophe Morandea
- DNCA
Philippe de Vecchi
- AXA Investment Managers Paris
Anne Bon
- Lyxor Asset Management
Alain Dubois
- BNP Paribas
Marianne Attal
- Cabinet Sellam
Patrick Sellam
- Bernard Coupez

Group 3: Management Company Regulation

- Allianz Global Investors France
Madame Krouri Radia
- Barclays Wealth Manager France
Jean Pierre Casey
- BNP Paribas Asset Management
Bernard Gaume
- CAAM Group
Christian Boisson
- FundLogic (Morgan Stanley group)
- Henri Casadesus
- IT Asset Management
Muriel Faure
- OFI Asset Management
Isabelle Habasque
- Groupama Asset Management
Francis Ailhaud

- AFG
Eric Pagniez
- AFTI
Nadine Rigutto and Serge Bernard
- AXA Investment Managers Paris
- Christian Rabeau
- Lyxor Asset Management
Alain Dubois
- ACAM- CB
Nathalie Bédier

Group 4: Investor Base accounting

- Dexia RBC
Carine Echelard
- Oddo Asset Management
Olivier Rolland
- BP SS
Frédéric Perard et Florence Dwyer
- SG SS
Michèle Besse
- Euroclear
Sébastien Seailles
- AFG
Pierre-Yves Berthon
- AFTI represented by DEXIA RBC, BPSS,
SGSS
- State Street
Bruno Noyon
- CACEIS
Anne Landier-Juglar
- DNCA
Philippe de Vecchi
- Axeltis
Marie-Laure Faller
- AXA Investment Managers Paris
Jean-Benoit Naudin