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## **A major investor protection milestone: the AMF sets specifics for its ban on the advertising of the riskiest products**

For several years, the AMF has focused its attention on exposing the danger posed to retail investors by highly speculative products such as forex and binary options trading. In addition to calls for public awareness campaigns, the regulator introduced and now commends the measure included in the "Sapin II" law <sup>(1)</sup> to ban electronic advertising for certain products. The details of this provision, which represents a considerable step forward for consumer protection, have now been specified.

### **A key measure for an issue of public interest**

Due to the crisis environment and wide online availability, retail investors have for several years been massively affected by offers to bet on forex or to trade using binary options. The AMF regularly warns of the danger of this activity; the toll of losses is incontrovertible. Publicised mainly through advertisements on high-traffic websites, these offers promise unrealistic returns and use formidable sales techniques. Moreover, behind these sales pitches often lie companies that employ questionable if not illegal practices. The impacts are significant: beyond the losses caused by unauthorised services providers, a study by the AMF showed that highly speculative trading is inherently dangerous for retail investors. Clients of leading services providers authorised by serious regulators reported EUR 175 million in losses compared with EUR 13 million in gains over four years and 90% of them lost money <sup>(2)</sup>.

The regulator has used all available means to limit retail investors' access to these highly speculative tools and, in particular, suggested that a legislative measure grant the legal capacity to ban advertising for these products.

This measure for regulating advertisements for highly speculative and risky contracts is now enshrined in the Sapin II law.

## **A mechanism for regulating all participants in the advertising chain**

Responsibility for this new legal framework is shared by the AMF and the General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF). As such, the Monetary and Financial Code and the Consumer Code have been amended. The scope of the ban is as follows: direct or indirect electronic advertising likely to affect retail investors and covering financial contracts considered to be speculative and risky.

On 1 August 2016, the AMF launched a public consultation to allow stakeholders to respond to the proposed amendment to the General Regulation, which is required for implementation of the new law. The response to this consultation, which closed on 30 September, was significant, with 208 companies, associations and individuals forwarding their opinions.

The proposal had the support of consumer associations, and requests were made for certain revisions and clarifications. After this feedback was reviewed and incorporated, the AMF General Regulation was amended and now defines the categories of financial contracts targeted by this measure, namely:

- Binary options;
- Contracts for difference (CFDs); and
- Foreign exchange contracts.

In practice, this affects all stakeholders, such as investment services providers offering these contracts and all participants in the advertising chain (media buyers, ad space buyers, media or ad sales companies, ad broadcasters, etc.). AMF staff will conduct active monitoring to identify banned advertisements while the DGCCRF and the AMF may, in accordance with their respective powers, sanction those involved.

Large numbers of retail investors are drawn in through online advertising: this measure marks a milestone in investor protection in France. In parallel, the AMF intends to pursue all its initiatives to combat this activity:

- Monitoring and publication of blacklists of unauthorised forex and binary options sites;
- Hotline for investors through its Epargne Info Services platform (01 53 45 62 00);
- Lawsuits to block access to illegal sites;
- Investigations into authorised entities and unregulated sites;
- Actions to have the Cypriot regulator develop controls and sanctions against authorised companies in that state;
- Activation of Article 62 of MiFID <sup>[3]</sup> to ban the operation in France of sites that are authorised in the European Union but fail to comply with applicable laws.

Lastly, as it believes that prevention and communication remain the most effective ways to protect retail investors, the AMF reiterates that any promise of easy, no-risk gains is pure fallacy.

## About the AMF

The AMF is an independent public authority responsible for ensuring that savings invested in financial products are protected, providing investors with adequate information and supervising the orderly operation of markets. Visit our website [www.amf-france.org](http://www.amf-france.org).

## Keywords


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[1] French Law n° 2016-1691 of 9 December 2016.

[2] Study AMF – October 2014 : Study of investment performance of individuals trading in CFDs and forex in France.

[3] Directive 2004/39/EC on markets in financial instruments – 21 April 2004.

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