AUTORITÉ DES MARCHÉS FINANCIERS

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Asset management: some reminders ahead of the 2018 post-summer holiday period

Money market funds, securitisation: management companies need to prepare for new regulatory deadlines in the coming months. At the same time, the AMF intends to continue its support initiatives relating to the new markets in financial instruments framework, MiFID II. Overview of the main texts to watch out for, with Xavier Parain, deputy Secretary General, who heads up the AMF's Asset Management Directorate.

MiFID II represented one of the major challenges for 2018. Is this new framework going to remain a hot topic for asset management companies?

Xavier Parain: The implementation date is behind us now, but MiFID II is still a hot topic. The European Securities and Markets Authority (ESMA) continues to release more detailed information, to enable market participants to implement the directive. In this regard, on 28 May of this year, it published revised guidelines on the requirements for suitability assessments for investment advisory services and management under mandate, providing important clarifications for market participants such as the opportunity for banking groups to analyse the costs/benefits of switching investments centrally, and not for each individual client. The translation of these guidelines into French and their transposition into French law are expected in the last quarter of 2018 or right at the beginning of 2019. ESMA continues to provide regular updates to its FAQs on MiFID II, with the latest update being added at the beginning of the summer.

At the same time, the AMF is continuing to update its policy as required. It will continue to release amended instructions, positions and recommendations until the end of 2018 and into 2019.

As the new European framework for the markets in financial instruments is one of the AMF's supervision priorities for 2018, the first feedback on the implementation of MiFID II should also be published between now and the end of the year, following the audit of the first market participants on this subject. Institutions may thus benefit from best practices on the subject of clients' knowledge and experience in investment.

The AMF will continue to monitor the implementation of the MiFID II directive to ensure that savers can still, in this more stringent regulatory environment, access a wide range of investment propositions from different distributors of financial products.

This summer, the European regulation on money market funds came into force. What is going to change for asset managers, in concrete terms?

Xavier Parain: Since 21 July of this year, asset managers launching new money market funds must meet the requirements of the European MMF Regulation. Its objective: to standardise and secure the operating rules for money market funds in Europe. Existing funds, which benefit from a transition period until the first quarter of 2019, are also affected.

In concrete terms, the regulation requires that all funds for which the description “money market” is used are subject to specific authorisation. Consequently, a fund that currently presents characteristics that are substantially similar to those of a money market fund must either apply for this authorisation, or change its characteristics so that it clearly no longer falls within the scope of the regulation.

We therefore encourage asset management companies to review their funds in order to ensure that each fund's individual position is clear, as existing funds have until 21 January 2019 to file an application for authorisation. In order to ensure that the estimated 400 files can be processed smoothly, we recommend that asset managers file their applications as soon as possible.

Other than the specific authorisation, the MMF Regulation defines a specific investment policy that applies to all funds, which replaces the rules that currently apply. Management companies must ensure that the money market fund portfolios have been correctly adapted. For example, except in the case of employee savings funds, formats such as funds of funds and master-feeder structures are no longer authorised.

Asset managers must also implement an autonomous procedure for assessing the credit quality of their investments, which may not be carried out by the managers of money market funds. Therefore, if necessary, asset management companies must adapt their organisational structures. Moreover, they must ensure they comply with the minimum requirements set out in detail in the dedicated delegated regulation (factors taken into account, validation, subsequent tests to be conducted) and the correct description of their structure with respect to unitholders.

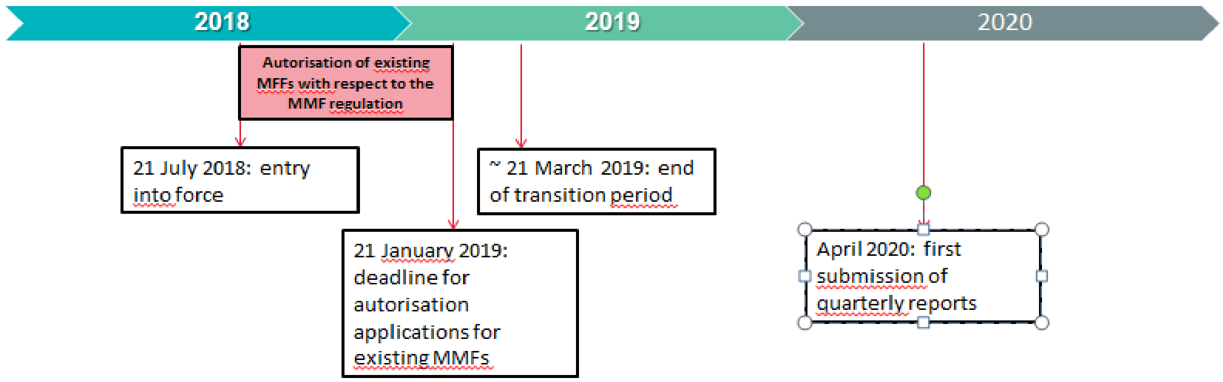
In addition, valuation based on the amortised cost method is no longer allowed for funds with a variable net asset value. Asset management companies will therefore need to adapt their valuation procedures so that, as far as possible, they use the market price method or, failing that, a model.

The MMF Regulation requires that funds comply with weighted duration metrics, and that they hold on an ongoing basis a minimum amount of liquid assets that mature daily or weekly. Asset management companies must, as far as possible, identify the different types of behaviour of investors in their funds, in order to anticipate potential redemptions more effectively. A system of stress tests developed out of the ESMA guidelines is also planned.

Moreover, asset management companies must publish information on their money market funds on a regular basis (net asset value, risk metrics, principal investment lines). Reporting requirements with respect to the supervisor will be established in the year 2020.

One more point to be aware of: fund managers who indicate that they invest in money market funds must verify that these funds are properly authorised MMFs.

The principal important dates to remember are:



The AMF published a guide on its website to support asset management companies in their administrative efforts and their initiatives to adapt to the new framework.

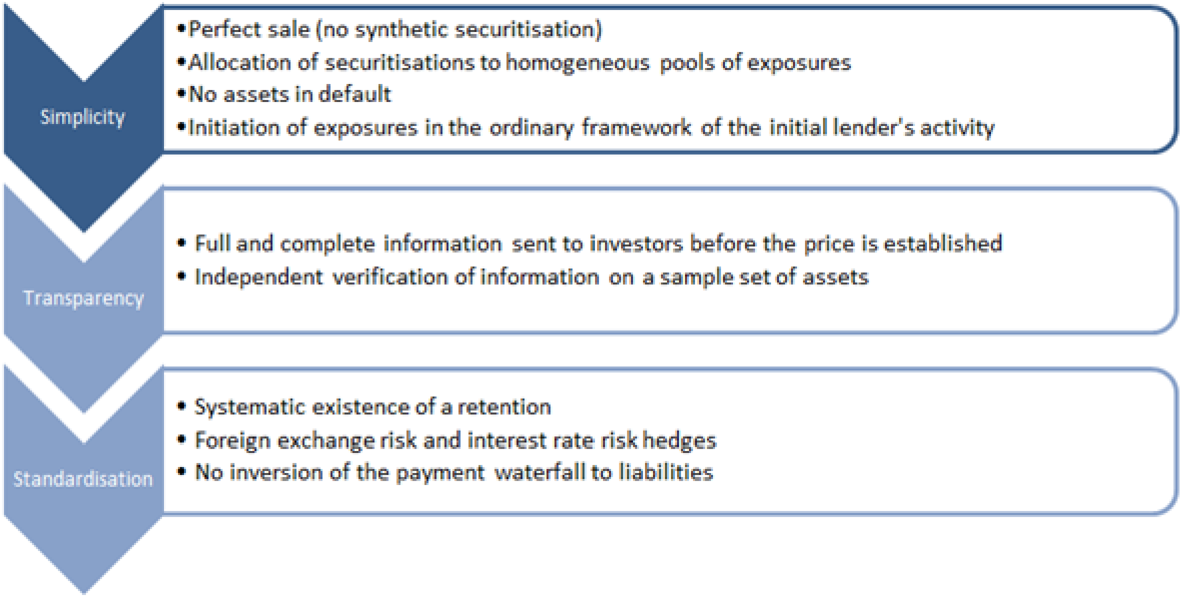
Where are we in terms of regulatory changes affecting the securitisation system?

Xavier Parain: In France, a year and a half after the Sapin II law was enacted, the reform programme for the securitisation law will reach a significant milestone with the coming publication of a Decree in Council of State that will specify the operational procedures for a new category of fund: specialised financing vehicles (SFVs).

SFVs are vehicles that are subject to the AIFM directive and reserved for professional investors, or similar parties. They may invest in the same assets as professional specialised funds, and may also acquire loans by means of signing an assignment form and issue debt securities (although these may not be tranched).

It will be the responsibility of the AMF to specify the reporting requirement and operational procedures for these vehicles in its General Regulation, which is due to be updated at the beginning of the autumn. Work on the changes to the AMF General Regulation that are intended to specify the system applicable to custodians of securitisation vehicles with effect from 2020 will also begin in the autumn.

At a European level, the regulation for Simple, Transparent and Standardised (STS) securitisation will enter into force on 1 January 2019. This regulation will be accompanied by changes in capital adequacy requirements applicable to credit institutions and investment firms (update of the CRR) and insurance companies (update of the delegated regulation Solvency II).



When the regulation enters into force, institutional investors, including managers of UCITS and alternative investment funds, will have to perform due diligence procedures before investing in the securitisations affected by the STS regulation, whether they are certified as STS or not. They will also have to conduct risk audits during the life of the securitisations in question. Asset management companies managing securitisations (e.g. tranched securitisation vehicles) will also need to comply with transparency requirements with respect to investors.

Brexit will force management companies to review their activitiesThe uncertainties relating to the United Kingdom's exit from the European Union will drive asset management companies to accelerate their analysis of the potential impacts on their activities by taking into account all the possible scenarios and making their decisions accordingly. This level of preparation will be just as necessary for French asset management companies having an activity in the United Kingdom linked to a passport (UCITS or AIFM management passport or AIFM or UCITS product passport) as for asset management companies in the United Kingdom having an activity linked to a passport in France (management or product passport).

Other than these European deadlines, is there a French legislative agenda that we need to bear in mind?

Xavier Parain: New developments in French regulations should be monitored as the summer holiday period comes to an end. The draft Pacte Law, which is currently being drawn up, could include a number of initiatives for investment by management companies in companies, and for asset management in general.

A decree finalising the implementation of the Sapin II decree in particular is also being prepared, to specify:

- the overhaul of the securitisation system and new specialised financing vehicles;
- the framework for new employee mutual funds (FCPEs) under French law invested in securities of a company governed by foreign law intended for its employees, set up in an international context;
- the regime applicable to forestry investment groups; and
- provisions governing the use of financial contracts by French real estate investment trusts (SCPIs) to hedge foreign exchange risk.

Read more

- ↘ Q&A on Money Market Funds - Guide for Asset Management Companies
- ↘ Regulation (EU) 2017/1131 of the european parliament and of the council of 14 June 2017 on money market funds
- ↘ Regulation (EU) 2017/2402 of the european parliament and of the council of 12 December 2017 laying down a
- ↘ ESMA publishes final guidelines on MiFID II suitability requirements
- ↘ Q&A on MiFID II and MiFIR investor protection and intermediaries topics

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