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## UCITS and AIFs: policy update

**The Autorité des Marchés Financiers (AMF) is updating its policy relating to UCITS and AIFs in order to integrate recent national and European legislative and regulatory developments.**

### **Update of instructions further to legislative and regulatory developments**

The AMF has published the update of five instructions relating to collective investment undertakings (CIU) in order to integrate changes in the applicable texts, and in particular the entry into force of the European regulation on money-market funds (MMF). The instructions have been adapted to take into account the new European framework and the resulting disclosure requirements, in line with the instruction guide to MMFs for portfolio asset management companies published by the AMF in July 2018 and updated in November 2018.

These instructions have also been adapted to take into account the following:

- Work related to the transposition of MiFID 2, in particular the procedures for displaying research costs in the prospectuses of UCITS and AIFs when the investment management company chooses to use a research account within the meaning of MiFID 2 as provided for in Article 314-22 of the AMF General Regulation as part of its collective management activity;

- The possibility, introduced by Order 2017-1432 of 4 October 2017, to create French employee savings plan funds (FCPEs) invested in the company's shares when the company is not governed by French law (Article L. 214-165-1 of the French Monetary and Financial Code).

## Change in the procedure for reporting outperformance fees

Moreover, the AMF is changing the way performance fees are published in regulatory documentation in order to allow the publishing of a maximum rate of outperformance sharing in the prospectus when the effective rate is also indicated. Where a maximum rate and an effective rate are stated in the prospectus, only an increase in the maximum rate will result in specific information to holders with the possibility of exit without fees. Changes in the effective rate, which may change from one fiscal year to another, are not concerned, as long as the effective rate remains lower than the projected maximum rate.

The AMF draws the attention of investment management companies to the one-year grace period as from the publication of this update to bring the regulatory documentation of their CIUs into compliance, provided that this does not place them in a situation of non-compliance with the laws and regulations in force. In particular, the update may involve adjustments to the contents of regulatory documents.

Scope	Reference	Title
Instruction	DOC-2011-19	Authorisation procedures, preparation of a KIID and a prospectus and periodic reporting for French and foreign UCITS marketed in France
Instruction	DOC-2011-20	Authorisation processes, preparation of a KIID and a prospectus and periodic reporting for retail investment funds, funds of alternative funds and professional retail investment funds
Instruction	DOC-2011-21	Authorisation procedures, preparation of a KIID and a prospectus, and reporting for employee investment undertakings
Instruction	DOC-2011-22	Authorisation procedures, preparation of a KIID and rules, and periodic reporting for private equity funds
Instruction	DOC-2011-23	Authorisation and establishment processes for a KIID and a prospectus and periodic information for real estate collective investment undertakings and professional real estate collective investment undertakings

There will later be an update that will set out the practical details of the AMF's new approach on the review of promotional marketing materials on collective investments according to a risk-based approach. The update will also take into account the provisions of the Pacte Law that impact these documents (e.g. the revision of the side pockets system).

## Update of the position on performance swaps on CIUs and structuring of active management

Given the renumbering of texts that followed the work to separate the legal regime of portfolio asset management companies from that of investment firms, some of the references cited in position DOC-2008-14 concerning fund performance swaps on CIUs and active management structures have been updated.

This update has also been the occasion to expressly include total return swaps on CIUs, which are now subject to the same regime as fund performance swaps on CIUs.

Lastly, references to the appendices of Regulation (EU) No 2015/2365 of the European Parliament and of the Council of the European Union of 25 November 2015 on transparency of securities financing transactions and reuse (SFTR), which list the information to be provided to investors in the prospectus and the annual report, have been added for educational purposes.

Scope	Reference	Title
Position	DOC-2008-14	Fund performance swaps and actively managed investment structures

### Read more

AMF Instruction DOC-2011-19 - Authorisation procedures, preparation of a KIID and a prospectus and periodic reporting for French and foreign UCITS marketed in France

AMF Instruction DOC-2011-20 - Authorisation processes, preparation of a KIID and a prospectus and periodic reporting for retail investment funds, funds of alternative funds and professional retail investment funds

- AMF Instruction DOC-2011-21 - Authorisation procedures, preparation of a KIID and a prospectus, and reporting for employee investment undertakings
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- AMF Instruction DOC-2011-22 - Authorisation procedures, preparation of a KIID and rules, and reporting for private equity funds
  - ✚
  
- AMF Instruction DOC-2011-23 - Authorisation and establishment processes for a KIID and a prospectus and periodic information for real estate collective investment undertakings and professional real estate collective investment undertakings
  - ✚
  
- AMF Position DOC-2008-14 - Fund performance swaps and actively managed investment structures
  - ✚
  
- Q&A on Money Market Funds - Guide for Asset Management Companies
  - ✚
  
- Actualité du 8 octobre 2018 - Contrôle des documentations à caractère promotionnel : l'AMF fait évoluer son approche concernant différents produits financiers à destination des particuliers
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- Communication of 8 October 2018 - Review of marketing materials: the AMF updates its approach for various financial products aimed at retail investors
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MMF

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