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MiFID II remuneration requirements: the AMF applies the ESMA Guidelines

The Autorité des Marchés Financiers (AMF) has published a Position DOC-2023-03 to incorporate the guidelines of the European Securities and Markets Authority (ESMA) on certain aspects of the MiFID II remuneration requirements. This position will come into force on October 3rd, 2023.

Context

In order to take into account the various events that occurred after the entry into force of MiFID 1 and in particular the financial crisis of 2007, a regulatory framework dedicated to remuneration practices has been developed in MiFID 2. In MiFID 1, this topic was only dealt with in the ESMA Guidelines issued in application of the conflicts of interest rules.

Investment service providers - hereafter "ISP", including asset management companies that provide investment services, are thus required to develop and implement remuneration policies. To ensure that clients are treated fairly, these policies must be designed so as not to create a conflict of interest or incentive for "relevant persons" to favour their own interests or those of the ISP at the potential expense of the interests of one or more clients.

A position which incorporates the ESMA Guidelines

Certain aspects of the MiFID II remuneration requirements are incorporated in a new Position DOC-2023-03.

These guidelines are designed to clarify the application of these requirements and aim to promote greater convergence in their interpretation and supervision, emphasising a number of important issues. They will accordingly be able to reinforce investor protection.

The three ESMA Guidelines, which translations have been published on 3 April 2023 and apply as of 3 October 2023, provide clarifications regarding the following aspects:

- Design of remuneration policies and practices;
- Governance;
- Controlling risks related to remuneration policies and practices.

The AMF applies these Guidelines to:

- investment firms and credit institutions when they provide at least one investment service; and
- asset management companies which provide at least one investment service.

The AMF also points out that these financial actors are also subject to other regulations covering remuneration schemes.

Repeal of the position published under MiFID 1

The ESMA Guidelines are intended to replace the guidelines on the same topic published under MiFID 1 and integrated into the AMF supervisory practices in its Position DOC-2013-24.

Therefore, the AMF will repeal this policy document when the new ESMA Guidelines come into force, i.e. on 3 October 2023.

Read more

AMF Position DOC-2023-03 : Exigences de rémunération de la directive MiFID II (in

📄 French only)

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