AUTORITÉ
DES MARCHÉS FINANCIERS

AMF

AMF Position-Recommendation
Programme of operations guide for asset management companies and self-managed collective investments – DOC-2012-19

References: Articles 311-1, 311-2, 312-2, 312-3, 312-6, 312-7, 312-8, 313-54, 313-72 to 313-77, 316-3, 316-4, 317-1, 317-2, 317-4, 317-3, 317-5, 317-7, 318-1 and 318-58 of the AMF General Regulation

Contents

The positions or recommendations presented in this guide are a continuation of the policy already applied by the AMF as part of the authorisation applications instructions for asset management companies.

The objective of this guide is to outline what is expected by the AMF in the authorisation application of an asset management company or in the updating of the programme of operations for an already-approved asset management company. It provides essential information for the development or update of a programme of operations in accordance with regulations.

The outline for this guide follows the outline of the "programme of operations" for asset management companies available in Appendix 1 of the AMF – DOC-2008-03 instructions, which also specifies the practical authorisation application procedures as well as those for information exchanges with the AMF.

Except when recommendations are specially identified, the aspects of the policy subject of this present guide are positions.

General points

Asset management companies are investment firms:

(i) that primarily provide the investment service mentioned in 4 of Article L. 321-1 of the Monetary and Financial Code (asset management service on behalf of a third party);

and/or

(ii) that manages one or several of the following:
a. French UCITS;
b. French AIF;
c. UCITS under foreign law;
d. AIF under foreign law;
e. other collective investments.

Asset management companies are regulated entities which are approved by the AMF. Pursuant to II of Article L. 532-9 of the Monetary and Financial Code, the AMF bases its approval on whether the asset management company:

1. Has its headquarters and effective management in France;
2. Has sufficient initial capital as well as the appropriate and sufficient financial means;
3. Provides the identity of its shareholders, whether direct or indirect, natural or legal persons, who have a qualifying holding as well as their level of participation; the Authority assesses the status of these shareholders in terms of the need to guarantee sound and prudent management;
4. Is effectively managed by two persons who at least possess the necessary good repute and suitable experience for their role, for the purpose of guaranteeing a sound and prudent management. The AMF General Regulation sets out the conditions for an exemption, where an asset management company may, by derogation, be managed by a single person. It outlines the measures which should be taken to guarantee the sound and prudent management of the company in question;
5. Has a programme of operations for every service that the company intends to offer, outlining the conditions under which it intends to provide the investment services in question or how it will manage the organisations mentioned in the first paragraph. It shall also indicate the type of operation envisaged as well as the structure of its organisation;
6. Adheres to a securities guarantee mechanism which is managed by the deposit protection fund in accordance with Articles L. 322-5 and L.322-10.

A self-managed vehicle is an investment vehicle (UCITS, AIF, etc.) that manages its own portfolio without general delegation by an asset management company.
Such a vehicle (collective investment) must fulfil the conditions applicable to asset management companies and must respect the provisions applicable to these companies[1]. Consequently, it must have resources and an organisation equivalent to those of an asset management company and must receive AMF authorisation. By method, when the collective investment (UCITS, AIF, etc.) is self-managed, each time the term "asset management company" is used in this document, it refers to a collective investment audit. All positions and recommendations in the present guide are also, in principle, applicable to it.

However, the positions and recommendations within this document do not apply to legal persons managing AIFs who are under no obligation to obtain authorisation as an asset management company. In other words, legal entities who manage only "Other AIFs" with a total asset value[2] of less than the 100 or 500 million euro threshold[3] and whose unitholders and shareholders are all professional investors under

[1] Articles L. 214-24 I of the Monetary and Financial Code and 411-1 of the AMF General Regulation.
[2] Calculated in accordance with Article 2 of Commission delegated regulation (EU) no. 231/2013 of 19 December 2012.
[3] Under the conditions of Article R. 532 - 12 - 1 of the Monetary and Financial Code:

the terms of the MIF directive. Investors are nonetheless reminded that that these legal entities should register with the AMF and comply with the relevant regulations in terms of reporting.
See also:

- the AMF DOC-2013-22 position – Questions - answers relating to the transposition of the AIFM directive in French law.
- the AMF DOC-2014-09 position – Terms and conditions for the implementation of obligations pertaining to accounts reporting to the AMF in the context of the AIFM directive.
- AMF DOC-2013-21 instruction – Terms and conditions of the registration of legal entities, other than asset management companies, managing certain Other AIFs.

1. Request presentation sheet

The section of the programme of operations "Subject of the request" contains administrative information and must outline, in particular, the nature of the request (if it is an initial authorisation, an update or an extension of the initial authorisation).

The person(s) designated accountable in the authorisation application (a future accountable senior manager under Article L. 532-9 II 4. of the Monetary and Financial Code) may be different to the person(s) responsible for the preparation of the file (e.g. a service provider or a lawyer).

The senior manager accountable, in his capacity as authorised signatory, affirms the completeness and accuracy of the information contained in the file presented to the AMF.

1.1. Scope of the programme of operations

The description of the "Scope of the programme of operations" presents a concise overview of the activities in which the asset management company is involved. It in no way replaces the detailed description of activities and services provided, instruments used and potential restrictions; detailed descriptions of which will appear in the body of the programme of operations and additional sheets.

All activities/services and instruments used by an asset management company should be described in the programme of operations. Pursuant to Article L. 532-9 of the Monetary and Financial Code, continued authorisation is subject to the continued possession of adequate means and organisation, as outlined in the programme of operations approved by the AMF.

- 100 million euros, including the assets acquired through leverage; or
- 500 million euros without resorting to leverage and cannot proceed to unit or share buy-back for a period of five years from the initial investment date in each AIF.

Authorisation table

Nature of the manager	
Self-managed investment vehicle	☐*
Asset management company	☐
A- Management activity	
Management of UCITS as defined by Directive 2009/65/EC (UCITS Directive)	
1- UCITS	☐
Management of AIF as defined by Directive 2011/61/UE (AIFM Directive)	
2 - AIF	☐
2a - Management (operating) above the thresholds established by AIFM Directive or having opted for application of the AIFM Directive	☐
2b - Manager (operating) below the thresholds who does not wish to opt for application of the AIFM Directive.	☐
2c - AIF manager acting under exceptional arrangements	☐
Management of a third-party portfolio as defined by directive no. 2004/39/EC (MIF Directive)	
3 - Mandates	☐
B - Authorised instruments in the programme of operations	
1- Instruments negotiated on an organised or regulated market (listed financial instruments, negotiable debt instruments...)	☐
2 - European UCITS and AIFs available to non-professional clients	☐
3 - European AIFs for professional clients and foreign country AIFs	☐
4 - Financial instruments that are not admitted to trading on a regulated or organised market	☐
5 – Real estate assets as defined by Article L. 214-36 of the Monetary and Financial Code	☐
6 - Loans	☐
7 - Simple derivative instruments (financial contracts)	☐
8 - Complex derivative instruments (financial contracts), including securities underlying complex derivatives	☐
9 - Others (to be specified):	☐
C - Potential restrictions	
Related to certain derivative instruments and associated embedded derivatives	
1 - Hedging transactions only	☐
Related to certain clients	
2 - Clients who are exclusively professional or similar	☐
Other restrictions	
3 - Other particular restrictions (to be specified):	☐
D - Other activities or services	
1 - Order reception/transmission (offering this service is prohibited if only "A1" or "A1+A3" are selected)	☐
2 - Marketing of UCITS/AIF managed by another manager	☐
3 - Investment advice	☐

4 – Management of mandates in the context of life insurance unit-linked contracts ☐

5 - Others (to be specified): ☐

Advice to companies under Article 3 of Article L.321-2 of the Monetary and Financial Code ☐

Investment research and financial analysis under Article 4 of Article L.321-2 of the Monetary and Financial Code ☐

1.2. Nature of the authorised manager

This reference indicates whether the manager is external (asset management company) or internal (self-managed vehicle).
As mentioned above, a self-managed vehicle is an investment vehicle (UCITS, AIF...) that manages its own portfolio without overall delegation to an asset management company.
Such a vehicle should fulfil the conditions applicable to asset management companies and respect the provisions applicable to these companies. Consequently, it must have resources and an organisation equivalent to that of an asset management company and must obtain AMF authorisation.
Queries arising from unique features (e.g. share capital) must be clarified by contacting the AMF.

1.3. Management activities

This section identifies the management activities, for which authorisation is required.

Management of UCITS (Line A1 of the authorisation table)

Management activity of UCITS is regulated by Directive 2009/65/EC of the European Parliament and the Council on 13th July 2009.

The asset management companies that directly manage at least one UCITS based in France, another European Union state or a member state of the European Economic Area (including the overall management delegation of UCITS in the form of a *SICAV* - an available-ended investment firm) ensure this activity. This does not prohibit asset management companies from providing one or several investment services, in particular third-party portfolio management services service of management of a third party's portfolio (individual mandates) or from managing any other collective investment, including AIFs, that are not included in this directive.

The articulation (possibilities and incompatibilities) between management activity (point A of the authorisation table) and the other activities or services of an asset management company that may be carried out is detailed in paragraph 1.5.2 below. Likewise, the possibilities regarding passports are detailed in point 5 below.

Pursuant to Article L. 532-10 of the Monetary and Financial Code, if, after twelve months have elapsed from the moment authorisation to manage a French or foreign UCITS is granted, the asset management company does not have at least one UCITS under management, the AMF may cancel the authorisation granted for this activity.

AIF management (Line A2 of the authorisation table)

Asset management companies managing collective investments that fall under the definition of AIFs provided in I of Article L.214-24 of the Monetary and Financial Code and specified by the DOC-2013-21 position relating to essential notions contained in the directives on Alternative Investment Fund Managers shall ensure this activity.

This activity may:

- **be entirely subject to the 2011/61/EU directive** ("AIFM directive") when the value of AIF assets managed, calculated according to Article 2 of Commission Delegated Regulation (EU) no. 231/2013 of 19 December 2012 is greater than the thresholds set out in Article R. 532-12-1 of the Monetary and Financial Code [4]or when the company wishes to opt for the full application of the AIFM directive for the management of AIFs in order to enjoy the opportunities it offers (such as the passport - see point 5 below). In this case option A2a is selected and the possibilities or incompatibilities with other activities or services are developed in point 1.5.2 below; or

- **be partially subject to the AIFM directive** when the value of assets of the managed AIFs, calculated in accordance with Article 2 of the Commission Delegated Regulation (EU) no. 231/2013 of 19 December 2012, is below the thresholds set in Article R. 532-12-1 of the Monetary and Financial Code and when the company does not wish to opt for full application of the AIFM directive. In this case, option A2b is selected;

- **not be subject to the AIFM directive** (for example, for the management of securitisation vehicles mentioned in I of Article L. 214-167 of the Monetary and Financial Code or for the entities appearing in III of Article L. 532-9 of the Monetary and Financial Code). In this case, option A2c is selected;

Boxes A2a and A2c may be selected at the same time where the asset management company requests authorisation under the AIFM directive for the management of its AIFs whilst also managing AIFs whose management is not subject to this directive (for example securitisation vehicles mentioned in I of Article L.214-167 of the Monetary and Financial Code).
Boxes A2b and A2c may also be selected at the same time.
However, Boxes A2a and A2b may not be selected at the same time.

In the case where option A2a is selected, the company must complete additional sheet 1.1 B relating to the AIFM directive in the appendix of the programme of operations.

Investors are reminded that when the AIF management activity:
- is entirely subject to the AIFM directive, then the asset management company must respect the provisions under 1B of Book III of the AMF General Regulation, referring the reader to Commission-delegated regulation (EU) 231/2013 of 19 December 2012 for this activity, if applicable;
- is partially subject to the AIFM directive, then the asset management company must respect the provisions under the Title I of Book III of the AMF General Regulation for this activity;
- is not subject to the AIFM directive, then the asset management company must respect the provisions under the Title I of Book III of the AMF General Regulation for this activity;

[4] The 100 million threshold, including assets acquired through leverage or the threshold of 500 million euros when the AIF does not use leverage and may not repurchase units or shares for a five-year period from the date of the initial investment in each AIF.

Positioning of the asset management company with regard to the AIFM directive	Example (s)	Corresponding option(s) of the authorisation table	Applicable provisions (in addition to the Monetary and Financial Code)
Asset management company **entirely subject** to the AIFM directive for its AIF management activity	- The asset management company is above the thresholds outlined in the AIFM directive[5]; - The asset management company is below the thresholds of the AIFM directive but wishes to opt for the full application to benefit from the management or marketing passports.	Box A2a	Title I-B of Book III of the AMF General Regulation which refers the reader, where necessary, to the Commission Delegated Regulation (EU) no. 231/2013 of 19 December 2012.
Asset management company **partially subject** to the AIFM directive for its AIF management activity	The asset management company is below the thresholds outlined in the AIFL directive and does not wish to opt for full application.	Box A2b	Title I of Book III of the AMF General Regulation.
Asset management company **not subject** to the AIFM directive for its AIF management activity	The asset management company manages the securitisation vehicles mentioned in 1 of Article L.214-167 of the Monetary and Financial Code.	Box A2c	Title I of Book III of the AMF General Regulation.

In the present guide, by method, any reference to specific provisions (from the AMF General Regulation or from the Commission Delegated Regulation (EU) no. 231/2013 of 19 December 2012) applicable to asset management companies which are entirely subject to the AIFM directive for their AIF management activity, is indicated with the expression "for asset management companies under 1 B of Book III of the AMF General Regulation, for their AIF management activity".

It should be noted that the present guide, in its current version, does not cover all the elements of the provisions applicable to asset management companies which are entirely subject to the AIFM directive, especially the AMF positions, including the ESMA guidelines (for example, AMF position, DOC-2013-11 - Remuneration policies applicable to managers of alternative investment funds, or AMF DOC-2014-09 position -Procedures for the establishment of regulations regarding reports for the AMF in the context of the AIFM directive, …)

[5] The value of the managed AIF assets, calculated in accordance with Article 2 of the Commission delegated regulation (EU) n. 231/2013 of 19 December 2012 is above the 100 million or 500 million dollar thresholds as stipulated in Article R. 532-12-1 of the Monetary and Financial Code.

If, after twelve months have elapsed from the moment authorisation to manage a French or foreign AIF is granted, the asset management company is not managing at least one AIF, the AMF may cancel the authorisation granted for this activity.

The articulation (possibilities and incompatibilities) between the management activity (point A of the authorisation table) and the other activities or services that may be carried out by an asset management company is detailed in paragraph 1.5.2 below. Likewise, the possibilities regarding passports are detailed in point 5 below.

Management of the portfolio of a third party (Line A3 of the authorisation table)

The asset management companies which offer this discretionary and individualised investment service and whose portfolios include one or several financial instruments managed on behalf of a third party.

In accordance with the provisions outlined in Article L.321-1 of the Monetary and Financial Code, "investment services shall cover financial instruments". A portfolio managed on behalf of a third party may contain, besides liquid assets, only financial instruments.

See also AMF DOC-2007-21 Position-Recommendation - Professional obligations relating to the management of portfolios on behalf of third parties for non-professional clients.

The possibilities regarding passports are detailed in point 5 below.

1.4. Authorised instruments

The list of instruments reported in the authorisation table constitutes a concise overview of instruments which the asset management company wishes to use in the context of developed strategies, irrespective of management type.

Investors are reminded that asset management companies are obliged to request an extension of their authorisation or an update of the existing complementary sheet prior to the use of new instruments (as from the first euro).

The complementary sheets, found in the appendix of the "programme of operations" specifically define how the below-listed instruments are to be used as well as their main features. These sheets are essential features of the authorisation requirements and absolutely must be completed for each category of instrument used. Consequently, the authorisation table must always be read in light of the asset management company's programme of operations.

Instruments traded on a regulated or organised market (Line B1 of the authorisation table)

This section covers instruments which are traded on a regulated French or European market, under Articles L. 421-1 and L.422-1 of the Monetary and Financial Code, a multilateral trading facility under Article L.424-1 of the Monetary and Financial Code (organised or not, including the *Marché Libre*) or a recognised foreign market under Article L. 423-1 of the Monetary and Financial Code.
The markets addressed in this section refer to the markets defined above but also to markets which do not fit in these categories but whose characteristics allow financial instruments to be traded. The financial instruments traded on markets which may present specific problems, particularly in terms of liquidity and valuation shall be subject to a specific description in the appropriate complementary sheet.
Asset management companies which have selected this option can invest in monetary market instruments, traded on the market for negotiable debts, which are liquid and have a value which can be determined at any time, in accordance with Article L. 214-20 or L. 214-24-55 of the Monetary and Financial Code.

Focus on the securities traded on the Alternext market (and other markets with reduced liquidity)

It is the responsibility of the asset management company to organise itself in such a way to appropriately assess, depending on the context of a fund or a particular strategy, the pertinence of the investment in a given security. Therefore, once again, we can mention some relevant context considerations which should be assessed before investing in a financial instrument:

- consistency with the management objective and the risk/ reward profile of the fund;

- impact on the ability of the mutual fund to honour redemption requests: the volumes exchanged on Alternext, an organised market, are not comparable to the volumes exchanged on the Euronext large-capitalizations. In this context, liquidity must be assessed taking into account the volume of the traded securities such as free-float market capitalization and securities owned by the mutual fund as well as the ability of the mutual fund to sell securities without influencing the price of the security. The structure of the fund's liabilities (nature and concentration of the underwriters) should again be taken into consideration here. The proportion of securities with reduced liquidity or whose liquidity may fall significantly and quickly should be determined depending on the need to access large or reasonably large portions of these assets to honour redemption requests;

- ability of the company to value the securities traded on Alternext: use of the exchange value of securities on Alternext requires that they have sufficient liquidity for this value to be representative of the probable negotiation value of securities in the case where they would be sold by the mutual fund. The amount of securities held by the mutual fund with regards to the volumes normally traded must also be taken into consideration, to assess how representative they are. This analysis may lead the asset management company to give up on the acquisition of certain securities, given the impossibility of having them valued precisely and independently;

- availability of information relating to the securities: the possibility of permitting the trading of shares on Alternext without offering them to the public. Included in the scope of potentially eligible shares for a mutual fund's assets are shares issued by entities for which available information may not be as detailed as it is for securities offered to the public. The acquisition of such securities by a mutual fund requires that the asset management company adapt its selection process and the subsequent tracking of the securities.

Focus on cat bonds

Generally equivalent to bonds, cat bonds often offer returns which are potentially superior to those of classic securities/bonds with this being offset by the risk to capital in the event of a catastrophic event.

The acquisition of or exposure to cat bonds by a mutual fund therefore requires that the asset management company carry out due diligence. Although not an exhaustive list, particular attention should be paid to the following points with regard to the acquisition of cat bonds:
- the impact on the ability of the mutual fund to honour redemption requests;
- the ability of the asset management company to assess the risk-return profile of the cat bond and its contribution to the risk profile of the portfolio and, consequently, the consistency with the management objective and the risk-return profile of the fund;
- potentially, the ability of the asset management company to hedge the cat bond position;
- the ability of the asset management company to value the cat bond.

The valuation of a cat bond depends both on the conditions offered by the players on the secondary market of the security, where applicable, and on the risk assessment for catastrophes. Further, for certain securities, the (amount of) loss incurred by the policyholders as a result of these events must be considered. Considering the uncertain liquidity of this secondary market and the risk of a liquidity crisis affecting all categories of assets in the case of even an isolated

catastrophe, the valuation cannot depend only on the conditions offered on the secondary market. Neither can it depend solely on a theoretical valuation of the risk of these events occurring, given the uncertainty linked to this evaluation. The latter uses complex mathematical models and databases which may lack the necessary detail or depth of information and may require a level of expertise which an asset management company does not, in general, have. Furthermore, the market value of a cat bond can differ substantially from its theoretical value. The difficulty posed by modelling the loss incurred by the insured parties may lead an asset management company to exclude cat bonds (which are compensatory) from the range of investments it offers. With such bonds, the loss in the case of catastrophes is dependent on the losses incurred, whereas for so-called parametric cat bonds the loss depends on easily observable variables: wind speed, strength of earthquake.

Focus on "CoCos"

"CoCos" (short for "contingent convertibles" or "compulsory convertibles") are subordinated debt securities issued by credit institutions or insurance or reinsurance companies that are eligible in their regulatory capital and are unique in that they can be converted into shares or written down in the event of a predefined trigger occurring, as specified in the prospectus for the said debt securities. They offer returns which are potentially superior to those of classic debt securities, with this being offset by significant risks that are often difficult to assess.

The acquisition of or exposure to CoCos by a mutual fund requires that the asset management company carry out due diligence. Although not an exhaustive list, particular attention should be paid to the following points with regard to the acquisition of or exposure to CoCos:

- the consistency with the management objective and the risk-return profile of the fund (particularly in cases where CoCos are deemed to be shares);
- the impact on the ability of the mutual fund to honour redemption requests;
- the ability of the asset management company to value the CoCo;
- the ability of the asset management company to assess the risk-return profile of the CoCo and its contribution to the risk profile of the portfolio;
- potentially, the ability of the asset management company to hedge the CoCo position.

The holding of CoCos also requires the implementation of a management process in the event of the securities being converted, which should provide for the sale or keeping of equity securities in the portfolio.

European UCITS and AIF which are available to non-professional clients (Line B2 of the authorisation table)

This section combines the UCITS established in France or other member states of the European Union or states party to the agreement on the European Economic Area and AIFs established in France in another member state of the European Union, available to non-professional clients in France. The use of UCITS/ AIF with a nature, strategy, and risk profile or with unconventional characteristics in terms of the overall strategy of the managed portfolio should be subject to a distinct description on the additional sheet. This could be, for example, an investment in UCITS whose liquidity is not appropriate for the managed portfolio (mandate or UCITS) or in listed UCITS such as ETFs with leverage, inverse index tracking or reliance on a specific category of assets (e.g. strategy indices or indices for raw materials).

European AIFs designed for professional clients and AIFs for foreign countries (Line B3 of the authorisation table)

This section combines AIFs from France and other member states of the European Union available to professional clients or similar and AIFs from foreign countries. Line B2 also includes, more generally, all foreign investment funds. The corresponding additional sheet outlines the scope for this type of investment (e.g. foreign ETFs, hedge funds, AIFs from managed accounts on platforms etc.). The

investment process, the organisation and monitoring system for the asset management company should be appropriate to the nature and complexity of the chosen funds.

The asset management company may refer to the AMF DOC - 2008-15 position-recommendation related to alternative multi-management in France.

Financial instruments which are not admitted for trading on a regulated or organised market (Line B4 of the authorisation table)

Instruments which are not admitted for trading on a market, in contrast to the instruments mentioned in Line B1 of the authorisation table, may be equity securities or securities which grant access to the security or debt instruments. The asset management company wishing to select shares in the context of its private equity activity should select this option.

This section does not combine forwards traded privately (financial contracts) or instruments from another instrument category subject to a specific, additional sheet[6]. If the asset management company is involved exclusively in real estate collective investment undertakings (*OPCI*s) and invests in securities of the companies mentioned in Article L. 214-36 of the Monetary and Financial Code, it is not necessary to select box B4 as well as box B5 (property assets) in the authorisation table.

Furthermore, an asset management company which manages private equity (authorised or declared) or specialized professional funds sometimes invests in:

(i) unlisted financial instruments which, following their introduction on the market, become securities which are admitted to trading on a market; or
(ii) financial instruments admitted to trading on a market with the intention of delisting them.
In both these cases, and only these cases, the AMF will not ask for an extension of authorisation for the selection of listed securities or securities admitted for trading to the extent that these securities are eligible for the assets of the private equity funds and have been selected, despite being listed, or they were selected, albeit listed, for the purpose of delisting them.

Although it is not necessary to select box B1 ("instruments traded on a regulated or organised market") in the authorisation table, when the activity of these securities is only to have holdings which have been authorised for trade on a regulated or organised market after being acquired in the context of the activity of the private equity, the programme of operations must still have previsions set out for this event, and must describe the management of these instruments and in particular the procedures for transfer of these securities (especially transmission channels and rules surrounding order execution).

Real-estate assets (Line B5 of the authorisation table)

This section covers assets listed in 1, 2 and 3 of I of Article L. 214-36 of the Monetary and Financial Code (applicable to real estate collective investment undertakings or *OPCI*s), as well as assets listed in 1 and 2 of Article L. 214-115 of the Monetary and Financial Code (applicable to real estate investment firms or *SCPI*s), in other words real estate and shares of companies of people not authorised for trading on a regulated or organised market whose assets consist mainly of real estate. Land and forests do not fall into this category. They fall under the “Others” category (Line B9).

[6] This section does not necessarily cover instruments used in marginal investments, at the express request of the client in the management mandates since these investments are covered in other categories of the authorisation table (and they must fit the range of activity of the investment management company with prior authorisation from the AMF).

Loans (Line B6 of the authorisation table)

In terms of collective management, certain collective investments have the option of selecting pre-existing loans (distinguishable from debt instruments that can be traded or are issued by securitization vehicles which are covered in other lines of the authorisation table) but may not grant loans.
Investors are reminded that that in terms of portfolio management on behalf of a third party (individual asset managed clients), it must be recalled that since the loans are not financial instruments, they may not be acquired in the context of asset management under Article L. 321-1 4. of the Monetary and Financial Code (but may be in the context of specific power of attorneys).

Simple derivative instruments (also called "simple financial contracts") (Line B7 of the authorisation table)

The assessment of the simple/ complex nature of a financial contract depends on its method of valuation, its risk profile and the type of strategy in which it is used.

Complex derivative instruments (also called "complex financial contracts") (Line B8 of the authorisation table)

A financial contract is complex if it is considered as non-standard or if it is based on a non-traditional source of risk. The products included in a complex optional component (currency barrier option, average spot barrier option) are considered as complex. For example, credit derivatives are considered as complex derivative instruments. Moreover, a debt instrument included in a complex option shall itself be considered as a complex product, requiring a specific authorisation procedure related to the selection of complex financial contracts**. For example, "CoCos"7 fall into this final category.**

Focus on certain securitisation vehicles presenting high levels of sophistication.

For complex instruments such as CDO (Collateralized Debt Obligation) securitisation vehicles, it should be ensured that:

- the consistency with the management objectives and risk/ reward profile of the mutual fund: if the securities issued by securitisation vehicles, and in particular the more senior tranches, are often used as a substitution for debt instruments issued by companies and financial institutions in monetary or bond funds. They present a different risk/return profile - a credit risk with different characteristics to the credit risk for companies and financial institutions is added to the potential rate risk. Minimized by the diversification of the underlying portfolio, it may be increased by the structuring of the securitisation vehicle and requires an assessment of the correlations of credit risk for the underlying entities. As with cat bonds, the complexity of the underlying legal frameworks may also be a source of risk. The potential rating of the security must therefore be seen in light of these factors. The acquisition of such securities in a bond portfolio requires therefore an explicit mention of this possibility and consequently the management objectives and risk profile of the mutual fund must be set out.

- conditions of valuation, of the impact on the risk/return profile of the mutual fund and of the liquidity: the reasoning here is similar to the reasoning explained for cat bonds. The poor liquidity of the secondary market, the unequal transparency of the underlying assets, the existence of

[7] The term "CoCos" (short for "contingent convertibles" or "compulsory convertibles") is used here to refer to subordinated debt securities issued by credit institutions or insurance or reinsurance companies that are eligible in their regulatory capital and are unique in that they can be converted into shares or written down in the event of a predefined trigger occurring, as specified in the prospectus for the said debt securities.

increased risk or other factors outside classic market risks are all elements that justify additional diligence for asset management companies and may lead to the disposal of the security if any of these factors change.

Others (Line B9 of the authorisation table)

The "others" box relates, in particular, to goods (or physical, bottles of wine, land...) as well as operations of acquisition or temporary transfer of financial securities when they are used beyond the net assets of the fund more than once.

Use of temporary acquisition or disposal operations for managed mutual fund securities

For the accomplishment of temporary acquisition or disposal operations of securities, an asset management company may act directly or employ an external provider. In the latter case, the provider may, on a discretionary basis, take over temporary acquisition or temporary disposal operations for securities on behalf of the asset management company, in the case of delegation of financial management or of the mutual fund(s) in question. They can only facilitate operations by carrying out the instructions of the asset management company according to the terms of the consultancy contract signed with the latter. In all cases the asset management company should update its programme of operations and act in the best interests of the unitholders or shareholders from the mutual fund that it manages.

a) Temporary acquisitions or temporary disposal of securities by the asset management company on behalf of the mutual fund

The asset management company describes in its programme of operations on one hand the applicable operational procedures and the tools used for the accomplishment of the operations of temporary acquisitions and temporary disposal of securities and, on the other hand, the procedure for risk control and permanent control established to ensure the regulations applicable to the asset management company are respected by the asset management company and the mutual fund.

b) Temporary acquisition and temporary disposal of securities on behalf of the mutual fund using an external provider

The asset management company describes in its programme of operations, as well as the above-mentioned points, the selection process for providers, the legal classification of the service provided by the provider as well as the means for exchanging information between the asset management company and the selected provider.

- *Delegation by the asset management company of operations relating to acquisition and temporary disposal of securities*

  When operations relating to temporary acquisitions and the temporary disposal of securities are entrusted, on a discretionary basis, to an external provider by the asset management company, this provider can consequently choose the securities to be lent or borrowed by the mutual fund, a contract for the delegation of financial management must be signed between the two parties, under the conditions mentioned in Articles 313-77 and 318-58 of the AMF General Regulation.

- *Temporary acquisitions and temporary disposal of securities by the provider carried out on the instructions of the asset management company.*

The asset management company may entrust an external provider with operations of temporary acquisitions and temporary security disposal without being subject to the financial management delegation regime [8] when this third party is acting on the basis of specific instructions.

To be able to manage the risks associated with the temporary acquisition and temporary disposal of securities, the asset management company must put in place an appropriate system of risk management and require the service provider to provide detailed daily reports on the activities it has been assigned. As an example, the intermediary shall inform the asset management company about the level of remuneration obtained from the securities compared to the market price.

The asset management company must have processes in place to allow:
- orders to be sent daily to the intermediary identifying precisely for each mutual fund under its management the securities that it wishes to lend;
- restrictions to be sent to the intermediary that the asset management company wishes to attach to the lending transaction each time a change is to be applied (securities provided to or received from third parties as a collateral or by third parties as a guarantee against the operations executed, requirements of overcollateralization, list of eligible compensatory measures or validation of the list drawn up by the external provider);
- to be able, at any moment, to recall the securities that were subject to the lending transaction.

However, when the temporary acquisitions or temporary disposal of securities are not tracked by the asset management company, and when a general and permanent instruction is given allowing the intermediary the total freedom to assess the securities to be lent in the coming weeks and to decide on the conditions of the operation, the delegated financial management regime shall apply.
The asset management company should ensure that the conditions regarding the governance and management of conflicts of interest that the provider contract may present are respected.

1.5. Potential restrictions

Hedging transactions (Line C1 of the authorisation table)

When the asset management company intends to limit the use of financial contracts designed only for hedging transactions, this box must be selected.
It must be specified that the risks covered and the type of instrument used should therefore be specified in the corresponding additional sheet ("Simple financial contracts" or "Complex financial contracts").

Clients who are exclusively professional or similar (Line C2 of the authorisation table)

This column should be selected if the asset management company only works (whether directly or indirectly through intermediary distributors) with clients considered to be:
- professional under Article L. 533-16 of the Monetary and Financial Code (professional clients listed in Article D. 533-11 of the Monetary and Financial Code and professional clients under option) and/or;
- eligible for the underwriting or for the acquisition of shares that are open to professional investors (see the related Articles and amendments in Book IV of the AMF General Regulation).

1.6. Other activities or services

Depending on the context of the activities of the asset management company and on the applicable regime (application of the 2009/65/EC directive, of the 2011/61/EU directive or the 2004/39/EC directive), the asset management company may or may not engage in additional activities.

[8] This analysis has no bearing on the potential qualification of the execution of orders as an intermediary investment service activity under Article L. 321-1 2. of the Monetary and Financial Code.

1.6.1 Definitions

The service of reception and transmission of orders for a third party ("RTO") (Line D1 of the authorisation table)

The service of reception and transmission of orders for a third party (RTO) is defined in Article D. 321-1 of the Monetary and Financial Code as "the reception and transmission, on behalf of a third party, of orders pertaining to financial instruments to a provider of investment services or to an entity from a state that is not a member of the European community and is not party to the agreement on the European Economic Area, possessing an equivalent status".
Investors are reminded that that when an asset management company receives and undertakes to manage a subscription order or a buyback order for shares of an UCITS or an AIF the company is under no obligation to obtain any authorisation relating to the reception and management of the order. It is not obliged to obtain authorisation to provide a service of order execution on behalf of a third party or to receive and transmit orders for a third party (see AMF DOC-2008-04 relating to the application of the rules of good conduct for asset management companies, management companies or managers when marketing UCITS or AIF shares).

The marketing of UCITS/ AIF managed by another manager (Line D2 of the authorisation table)

This activity is defined in paragraph 4.2 of the present document

Investment advice (Line D3 of the authorisation table)

In accordance with 5. of Article 321-1 of the Monetary and Financial Code "the service of investment advice is defined as providing personalised recommendations to a third party, either at his request or at the initiative of the company providing the advice, concerning one or several transactions relating to financial instruments".

Under Article 314-43 of the AMF General Regulation, a recommendation is personalised "when it is addressed to a person in his capacity as an investor or potential investor, or as a representative of an investor or potential investor. This recommendation should be presented as being tailored to this person, or based on an examination of his own situation and must recommend an operation from one of the following categories:

1. The purchase, sale, subscription, exchange, reimbursement, holding or underwriting of a particular financial instrument;
2. The exercising or non-exercising of a right granted by a particular financial instrument to buy or sell, subscribe, exchange or redeem a financial instrument.

A recommendation is not considered personalised if it is issued exclusively through distribution channels or to the public".

See also position-recommendation AMF DOC-2008-23 – Questions/answers on providing investment advice.

The asset management company generally provides the service of investment advice in the context of the distribution of financial products (including the marketing of UCITS/ AIFs) Diligence relating to this service is linked to the status of the investor to whom the asset management company offers its services (see in particular Articles 314-45 and 314-54 of the AMF General Regulation).

Management of mandates in the context of life insurance unit-linked contracts (Line D4 of the authorisation table)

Sometimes the underwriters of a unitholder life insurance contract entrust the asset management company, via mandate, the option, depending on the trade-offs, to modify on a discretionary basis, in their name and on their behalf the units which were initially selected. Although in legal terms, since the account

units are not financial instruments, such a mandate is not part of the service of portfolio management for a third party the AMF nevertheless asks that the asset management company commit to applying the rules relating to organisation and good conduct (identical to those applicable to the service of portfolio management on behalf of a third party) to this arbitration activity in the context of unit-linked life insurance contracts.

Others (Line D5 of the authorisation table)

Here the asset management company should present other activities that are not specifically addressed in previous sections, such as advice on property, insurance brokerage (save for management of arbitrage mandates in the context of life insurance contracts in currency units) or advice and financial analysis provided to companies.
It should be noted that the "Others" category of the authorisation table explicitly addresses the activity of advice and financial analysis provided to companies. The text format is therefore reserved for the description of activities other than the latter.

It is stated that these other activities (targeted in Line D5) may be carried out if they are an extension of the management activity.
The asset management company may engage in activity related to the management of power of attorneys, particularly in real estate or when selecting debts if this is an extension of its main activity.
An asset management company may only offer brokerage services for life insurance contracts if this is a method of marketing the mutual fund. This activity must be an extension of the asset management company's main activity.

1.6.2 Articulations and Incompatibilities

It is possible to offer several services and to engage in several activities, it being specified that:

- a company whose management activity is limited to the service of portfolio management for a third party (box A3 of the authorisation table) should only be considered as an asset management company if this is their principal activity, in accordance with Article L. 532-9 of the Monetary and Financial Code (failing that, authorisation as an investment service provider is granted by the ACPR - French Prudential Supervisory Authority);

- Article 312-of the AMF General Regulation states that where it manages at least one UCITS and where it is not authorised under the 1st B of Book III, the asset management company may carry out no investment activities other than portfolio management and investment advice. Consequently, an asset management company only authorised to manage UCITS may not provide the RTO services (box D1) but is authorised, where applicable, to market the UCITS/ AIFs that it manages or which are managed by another management company (box D2);

- Article 317-7 of the AMF General Regulation states that, other than the management of AIFs, the asset management company subject to heading 1B of Book III may only provide the following investment services: order reception/transmission for a third party, portfolio management on behalf of third parties and investment advice;

- The I of Article L. 532-9 of the Monetary and Financial Code states that an asset management company authorised under the AIFM directive that does not manage a UCITS may not manage one or several "Other collective investments";

- Investment management companies are not authorised to be depositaries for assets but are authorised to hold the list of unitholders or shareholders of their UCITS / AIFs;

- an asset management company may hold the status of member of a regulated market only in the context of its portfolio management activity. In this case a prior update is necessary.

2. Characteristics of the Asset management company

2.1. Identity

2.1.1. Form of the Asset management company

Articles 312-2 and 317-1[9] of the AMF General Regulation state that an asset management company "may be incorporated in any form, subject to a review of its articles of association to ensure they are consistent with the laws and regulations applicable to the company and provided its accounts are subject to a statutory audit ".

Therefore, the asset management company taking the form of a simplified joint-stock company (SAS) must designate an auditor.
The asset management company taking the form of limited liability (SARL) must designate at least one Primary Auditor and an Alternate Auditor.
When the asset management company is a limited partnership or a simplified joint-stock company (SAS) the asset management company ensures that the principle of decision-making autonomy for senior managers and/or managers is clearly defined in its articles of association. Likewise, in the case of a simplified joint-stock company (SAS), the articles of association must also describe the powers of the senior managers other than the president. Investors are reminded that that the latter may also be a legal entity.

Moreover, it is not necessary that the asset management company be legally established at the time of the authorisation request. It is therefore issued subject to a condition precedent of sending the AMF the documents certifying the effective creation of the asset management company (K-bis, or French corporate registration certificate, and final articles of association)

2.1.2. Headquarters

The headquarters of the asset management company shall be situated in France. The asset management company may separate its headquarters and administrative base, both of which must be situated in France.
The location of the headquarters is, in principal, wherever the asset management company's legal, financial, administrative and technical management are based.

2.2. Shareholding and holdings

Shareholding of the asset management company

Under Articles 312-5 and 317-4[10] of its General Regulation, the AMF assesses the quality of individual or legal entity direct and indirect shareholders who have a qualifying holding and the amount of their holding given the need to guarantee sound and prudent management of the company and the proper fulfilment of its own supervisory function. The same assessment should be applied to associates and members of an economic interest group.

This assessment, under Article R. 532-15-1 of the Monetary and Financial Code is based on several criteria:
1. The reputation of the proposed acquirer;

[9] For asset management companies subject to title 1B of Book III of the AMF General Regulation for their AIF management activity.
[10] For asset management companies subject to title 1B of Book III of the AMF General Regulation for their AIF management activity.

2. The reputation and experience of any person who, following the proposed acquisition, shall take charge of the management of the asset management company's activities under 4 of Article L. 532-9;
3. The financial soundness of the proposed acquirer, especially given the type of activities carried out and planned within the asset management company targeted by the proposed acquisition;
4. The ability of the asset management company to satisfy and continue to satisfy the prudential obligations resulting from this title, particularly in regards to knowing if the group it belongs to possesses a structure that allows an effective monitoring to really exchange information between the competent authorities and to determine the sharing of responsibilities among the competent authorities;
5. The existence of reasonable grounds to suspect an operation or money laundering or terrorist financing (or an attempt at these) is pending or has occurred, that is related to the proposed acquisition, or that the proposed acquisition may increase the risk of one of these activities.

Article R. 532-14 of the Monetary and Financial Code adds that "when the applicant is a direct or indirect subsidiary of an investment firm or a credit institution whose headquarters are not in France it must also provide specific information on the supervision/ monitoring it is subject to as well as the structure of the group to which it belongs. Where applicable, it must also provide precise information on the nature and extent of the authorisation of the company to provide investment services".

In the authorisation application the asset management company must provide the identity and position of each of the capital providers, natural or legal persons that have direct or indirect control of at least 5% of the capital or voting rights. However, while examining the application, the AMF departments may ask for an exhaustive list of capital providers if it believes this to be necessary to form a complete understanding of these providers.

Any person who directly or indirectly holds a qualifying holding must forward the specific information mentioned in the declaration of the capital providers displayed in Appendix 2 of instruction DOC-2008-03 for each shareholder to the AMF

Recommendation
In order to guarantee a sound and prudent management, thereby reducing deadlock situations between shareholders that could prove damaging for the clients of the asset management company, the AMF recommends the avoidance of a strict equal division of the shareholder's powers (particularly in terms of voting rights) between two natural or legal persons. It is possible, for this purpose, to state in a shareholders' agreement or in the asset management company's articles of association (for *SAS*s - simplified joint-stock companies), rules of governance to try and avoid deadlock situations.

In the case of groups, the authorisation application contains a diagram of the group and the explanations of the placement of the applicant asset management company in terms of other companies belonging to its group.

Investors are reminded that also that in accordance with Article L. 532-9 of the Monetary and Financial Code "the AMF may refuse the authorisation when the monitoring of the asset management company is likely to be hampered by a.) the existence of a capital bond or indirect/direct controls between the applicant company and other natural or legal persons, or b.) the legislative/regulatory provisions of a state not party to the agreement on the European Economic Area where one or several of these persons operate under the jurisdiction of this state"

Participations of the asset management company.

Pursuant to the provisions of Articles 312-9 and 317-8 [11] of the AMF General Regulation, "an asset management company may hold participations in companies whose activities are an extension of their own activities. These participations must be compatible with the provisions that the asset management

[11] For asset management companies subject to title 1B of Book III of the AMF General Regulation for their AIF management activity.

company is bound to respect regarding the detection and prevention or management of conflicts of interest which may result from these participations".

For example, a stake taken in a holiday resort, with no link whatsoever to the activity undertaken by the asset management company is not considered an extension of its activities.

When the asset management company holds participations or subsidiaries, the programme of operations describes the activities of the companies held. The programme of operations also displays, where applicable, the means common to all of the entities and the procedures for the intra-group combatting of money laundering and terrorist financing.
An exhaustive diagram of the group indicating the direct and indirect participations as well as the percentages held is attached to the authorisation application.

The asset management companies concerned forward to the AMF the accounting data, where applicable, consolidated as well as an analysis of the impact of the stake taken on the company's capital (paragraph 5 of this document).

2.3. Directors under Article L. 532-9 11 4. of the Monetary and Financial Code

2.3.1. Persons effectively managing the asset management company

Article L. 532-9 11 4. of the Monetary and Financial Code maintains that the asset management company "be managed by 2 persons of sufficiently good repute and experience appropriate to their position in order to guarantee sound and prudent management". Pursuant to Article L. 532-9 of the Monetary and Financial Code, the AMF General Regulation sets forth the conditions under which an asset management company may, by way of derogation, may only be effectively managed by a single person.
In all cases, the senior managers are natural persons exercising operational and effective functions.
The management company must specify in the programme of operations the persons who effectively manage the asset management company and must attach the CV of each senior manager to the authorisation application file.

Specifically regarding the assessment of the integrity of the senior manager, the AMF may look to analyse any type of information that may call into question the integrity of this person. The AMF may refuse the request for authorisation of an asset management company if it does not have all the necessary assurances regarding the integrity of the senior managers under Article L. 532-9 II 4. of the Monetary and Financial Code.

The AMF has several sources of information that it uses to assess the integrity of the designated senior manager. In particular:
- all information requested in Appendix 3-1 of instruction AMF DOC - 2008-03 (this information is given particular attention by the AMF, it is therefore imperative that the designated senior manager be very precise when writing them out and that he/she does not leave out any fact that should be brought to the attention of the AMF);
- the AMF consults the various competent authorities when the asset management company is part of a group (Article R. 532-15 I of the Monetary and Financial Code) and when the senior manager has held a position in a regulated foreign entity;
- the senior manager provides report n°3 of his/her criminal record, accompanied by Appendix 3-2 of the AMF instruction AMF-DOC-2008-03.

Moreover, the AMF reserves the right to consult report n°2 of the criminal record under Article 776 of the Criminal Procedure Code.

The AMF has already refused the designation of a senior manager under Article L. 532-9 11 4. of the Monetary and Financial Code, for example, on the grounds that:
- the person received a financial penalty and received a reprimand from the AMF's *Commission des sanctions* (Sanction Commission);
- the person, in another application, was in the past dismissed for gross misconduct, the reason for which was linked to the management; or

- the person was dismissed for misconduct and did not convey this information to the AMF prior to the assessment of the authorisation application of the company by the AMF.

Moreover, the senior managers under Article L. 532-9 II 4. of the Monetary and Financial Code must sit the exam to assess their level of knowledge, as mentioned in Article 313-7-1 and 318-7[12] of the AMF General Regulation where the senior manager performs a function addressed by these provisions.

The case of asset management companies with two executive senior managers

Articles 312-6 and 317-5[13] of the AMF General Regulation state that "at least one of these two persons must be an executive director authorised to represent the company in its dealings with third parties. The other person may be the president of the board of the directors or someone specially authorised by the collegiate executive bodies or articles of association to manage and determine the direction of the company".

The Chief Executive Officer must therefore be a corporate officer authorised to represent the asset management company in its dealings with third parties.
For example, the Chief Executive Officer may be, for:

- a public limited company with a board of directors: managing director or deputy managing director;
- a public limited company governed by an Executive board: the president of the Executive or the sole managing director;
- a simplified joint-stock company (*SAS*): the president (moreover, he must be named senior manager of the company);
- a General Partnership (*SNC*): the manager;
- a Limited Liability Company (*SARL*): the manager;
- an economic interest group: the administrator or member of the management board, depending on the organisation defined in the articles of association.

The second in command may be another executive director authorised to represent the company in its dealings with third parties, the president of the board of directors, or a person specially authorised by collegiate executive bodies or the articles of association to manage and determine the direction of the asset management company.

When he is not a corporate officer authorised to represent the asset management company in its dealings with third parties (particularly in the case of *SAS*s) or does not perform the function of president of the board of directors, the second in command must be an employee of the asset management company and authorised, by the collegiate executive bodies (or the articles of association for companies with no collegiate executive bodies), to effectively determine the orientation of the asset management company's activity, including, in particular, control of accounting and financial information and the determination of the level of equity. When the second in the command performs other functions, these must not have the potential to generate conflicts of interest with the activities of the asset management company.

The case of asset management companies with one sole senior manager

Under Article 312-7 of the AMF General Regulation: "an asset management company may, by way of derogation from Article 312-6 be effectively managed only by one senior manager when the following conditions are met:
1. The asset management companies do not manage any UCITS;
2. The total outstanding amount managed by the asset management company is below 20 million euros or, if the amount is higher, the asset management company is only authorised to manage professional equity funds;

[12] For asset management companies subject to title 1B of Book III of the AMF General Regulation for their AIF management activity.
[13] For asset management companies subject to title 1B of Book III of the AMF General Regulation for their AIF management activity.

3. The collegiate executive bodies or articles of association of the asset management company have designated a person to immediately replace the senior manager in all his functions when it is impossible for him to perform these functions;
4. The designated person from 3. has sufficient good repute and suitable experience in his position as senior manager for the purpose of ensuring the sound and prudent management of the asset management company. He must be available to be in a position to be able to ensure the replacement of the senior manager".

Moreover, under Article 317-5 of the AMF General Regulation, this situation is not possible for those asset management companies which are entirely subject to the AIFM directive for their AIF management activity.

The sole manager and the person designated to replace him (when this person is part of the management of the asset management company) must be individual corporate officers authorised to represent the asset management company in its dealings with third parties.

The asset management company identifies in its programme of operations the person managing the asset management company and the person who has been designated to replace him with a curriculum vitae attached for each of these persons. This designation and the definition of functions are endorsed by the collegiate executive bodies of the asset management company.

2.3.2. Time spent by the senior manager(s) in the asset management company

The case of asset management companies with two executive senior managers

Articles 313-54 and 318-1[14] of the AMF General Regulation establish the principle of the asset management company's permanent availability. The AMF considers that at least one of the senior managers should be full-time in the company.

If the asset management company is part of a group and one of the senior managers wishes to divide his time with another company within the group, specific provisions are taken by the asset management company and outlined in its programme of operations to ensure management continuity and to prevent any risk of conflicts of interest. As such, the AMF considers that effective management cannot be ensured if a senior manager spends less than 20% of his working hours in the asset management companies.

For example, mechanisms and procedures should be put in place in order to:
- prevent the risk of a conflict of interest and of the dissemination of confidential information (Chinese wall, client information, specific monitoring...) or
- ensure that the joint senior manager is not able to perform operational functions that will generate conflicts of interest in both structures in relation to the provision of an investment service or collective management.

For example, a senior manager of an asset management company that also provides investment advice may not be involved in the operational management process of the asset management company as well as the operational aspect of the other company where these two activities may generate conflicts of interest, in order to avoid any risk of confusion between the two companies.

The case of asset management companies with one sole senior manager

The sole manager must have a full-time role in the asset management company.

[14] For asset management companies subject to title 1B of Book III of the AMF General Regulation for their AIF management activity.

2.4. Corporate officers who are not designated as senior managers

The programme of operations outlines the composition of the corporate bodies and identifies the members of the corporate bodies as well as their functions, whether this be members of the board of directors or of the supervisory board of public limited companies or of legal bodies or of statutory bodies of another type of company.

For companies defined as LLC (*SARL*) or GP (*SNC*), limited partnership or a private company limited by shares (*SCA*), the managers must be identified or, where applicable, natural persons representing the managers with the status 'legal person".

When the asset management company is a partnership, these provisions apply to non-management partners.

2.5. Membership of an industry group under Article L. 531-8 of the Monetary and Financial Code

Pursuant to Article L.531-8 of the Monetary and Financial Code, "Each investment firm, market undertakings and clearing house belongs to an industry group of their choosing, responsible for the collective representation and defence of the rights and interests of its members".

The industry group chosen by the asset management company must be affiliated to the AFECEI (French Association of Credit Institutions and Investment firms).

Moreover, it is not necessary that the asset management company already be a member of an industry group when it applies for authorisation. In this case the company must immediately forward documents relating to the portfolio management company's permanent membership of an industry group to the AMF, after the request for authorisation (copy of the initial registration).

3. Activities and organisation of the asset management company

3.1. General presentation of the activities of the asset management company

The tables that appear in Appendix 1.1 of the AMF-DOC 2008-03 (paragraph 3.1) instruction present the activities of the asset management company. They must be duly completed ensuring the information mentioned is presented in a concise manner and that the features of the programme of operations are consistent.

3.2. Organisation of the asset management company.

3.2.1. Human resources

Presentation of the human resources

In accordance with Articles 313-54 and 318-1 [15] of the AMF General Regulation, the asset management company permanently uses resources, especially human resources, which are appropriate and sufficient.

The programme of operations shall be in the form of a diagram or table of human resources which the asset management company possesses. The file contains the up-to-date *curricula vitae* of the senior managers, financial managers, the compliance and internal control manager (*RCCI*) and any other person with responsibilities within the company, particularly the person in charge of risk management and those responsible for administration, marketing and human resources.

In the case of personnel provided by an entity of the group, the secondment contract or supply contract (dated and signed), specifying in particular the duties of the personnel in question, the existence of a reporting line to the senior managers of the asset management company for the functions performed in the entity, the time to be spent working for the company, as well as the procedures for costs relating to seconded personnel must be attached to the authorisation application.

Investors are reminded that that any person responsible for key functions within the asset management company (senior manager, financial manager, internal control manager (*RCCI*), Chief Risk Officer) must justify his link to the company through a work contract, a corporate mandate or a secondment agreement (and not by a consultancy contract).

Description of human resources and distribution of roles

The programme of operations must make it possible to identify those responsible for the main activities planned as well as:
1. the number of employees assigned to each role or department;
2. the number of managers assigned to financial management;
3. the number of persons assigned to sales roles;
4. the number of persons assigned to support roles;

The time that each person spends at work must be specified. For persons occupying other roles within the group or in other companies, their responsibilities should be described in detail. In this case, a specific note on the management of conflicts of interest must be attached to the application, as indicated in paragraph 3.2.9.

Large asset management companies may only provide the identity of department managers and the number of employees.

In order to ensure adequate resources at all times, the asset management company must have a minimum of three persons for an equivalent of three full-time positions, including at least two full-time financial managers. Financial managers are employees authorised to make investment and disinvestment decisions within the framework of managing collective and individual portfolios, including portfolios of assets not classed as financial instruments (real estate assets, loans etc.)..

In addition, in order to limit the risk of conflicts of interest and in the interest of ensuring adequate resources at all times, persons taking part in investment decisions (financial managers) must not carry out other roles within the entity, its membership group or any other third-party company.

By way of exception, the AMF considers that a financial manager may not work full-time for the company (in the sense that they may carry out other regulated activities) if, and only if, the following cumulative conditions are satisfied:
- the company only deals with professional clients or equivalent;
- the number of transactions carried out annually is limited (private equity or real estate, in particular);

[15] For asset management companies subject to title 1B of Book III of the AMF General Regulation for their AIF management activity.

- adequate resources are ensured at all times, meaning that there is a sufficient number of other members of the management team (two other managers working on the same asset class are present full-time);
- the complete absence of a risk of a conflict of interests is justified (a completely distinct investment universe, the absence of a business relationship between the companies);
- the different management structures belong to the same group in the case of shared management.

Financial managers' experience

In accordance with Articles 313-54 of the AMF General Regulation and 22 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012[16], the asset management company shall employ staff with the skills, knowledge and expertise required to carry out the responsibilities entrusted to them.

The experience of discretionary portfolio managers must be suited to the vehicles used (mandates, UCIs etc.), the strategies implemented, the financial instruments used and the target clients. All strategies must be covered by at least one financial manager. It is necessary to ensure that another financial manager (ensuring adequate resources at all times) with suitable experience is able to replace them if needed (concept of "manager back-up").

Managers must also have experience of the vehicle (real estate investment trusts, securitised mutual funds, employee investment funds etc.) as soon this is operated in a specific way. In certain cases, the manager's experience of the vehicle may be replaced by that of a middle office manager with the necessary experience.

In exceptional cases, and only in the case where the asset management company wants to manage UCITS or AIFs directed exclusively at professional investors or equivalent, the collective management experience required can come from a person other than the financial manager. The AMF will assess if this person's profile is suitable for the planned activities.

3.2.2. Technical resources linked to management and other activities carried out

The items below also concern, where appropriate, part III 1 of the programme of operations when it deals with technical resources related to other activities and investment services.

In accordance with Articles 313-54 and 318-1[17] of the AMF General Regulation, the asset management company shall have adequate resources at all times, in particular adequate and sufficient equipment.

Tools and computer software shall be briefly described in the authorisation application, distinguished according to their scope of use (databases, holding and monitoring portfolios, valuation, calculation of the overall risk ratio, managing risk, order execution etc.). The procedures for developing, monitoring and validating settings must allow the asset management company to ensure the smooth operation, robustness and relevance of the tools used.

For example, with regard to the monitoring of positions and valuation of portfolios, an asset management company shall have the tools and/or software designed to ensure the independent monitoring of portfolios and their reconciliation with the data recorded by the depositary/account holder and person responsible for administrative and account management.

In the case of technical resources (decision making tools, databases, order execution tools or those for holding/valuing portfolios etc.) provided by a third party (group or service provider) , the asset management company must ensure the implementation of measures guaranteeing its independence from

[16] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.
[17] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

the third party and describe these items in the authorisation application (for example: confidentiality of data, conditions in the event of a breach of contract etc. in order to ensure the continuity of operations).

The configuration and validation of tools for position monitoring and controls must be carried out in collaboration with a person or provider with suitable experience.

In addition, when the asset management company is a subsidiary of another investment services provider or of a credit institution and/or belongs to a group of companies, the asset management company may benefit from resources provided by its membership group. Such provision is also possible, by way of exception, when the asset management company has a principal minority shareholder (holding at least 33.34% of the equity or voting rights), who can offer, in particular, resources that facilitate its structuring or development.

The agreements for providing services and group resources must be analysed according of the principle of autonomy and the supervision of potential conflicts of interest.

These arrangements must in all cases ensure that the asset management company observes the provisions of Article 313-54 of the AMF General Regulation or Articles 318-1 of the AMF General Regulation and 57 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012[18]. The agreements must be attached to the authorisation application.

The company, when it manages AIFs, must also confirm in its authorisation application that it has the necessary tools to prepare reports required by the regulator.

3.2.3. Investment and disinvestment processes

The asset management company's investment processes extend from the generation of strategic ideas, investment decisions, their implementation and up to disinvestment. The programme of operations must describe the general principles employed by the asset management company for organising the investment process or processes.
The asset management company must, in particular, specifically describe the stakeholders, their role, decision-making methods and the traceability of these decisions.

Recommendation
It is recommended, as good practice, to establish a procedure defining the investment decision-making process.

An asset management company shall make its investment decisions independently. Any committee made up of persons outside of the management team, which is solely authorised to make investment decisions, may not therefore have an advisory role. Thus a committee comprising investors, external experts or any other third party outside the asset management company cannot vote on decisions during the investment process.

Recommendation
It is recommended that two separate committees be set up when persons outside of the asset management company are invited to give their advice on the planned investment projects.

The autonomy and independence of the asset management company must prevail when the latter has recourse to an external provider within the framework of its investment process (financial investment advisor, expert, analyst etc.). Thus, when the company uses advice or other external service providers, it must perform specific due diligence enabling it to forge its own assessment, independent of the work or analyses provided by third parties.

[18] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

3.2.4. Order execution and transmission

Projected allocation of orders

IV of Article 314-66 of the AMF General regulation and Article 25 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012, defines the regulations for measures for placing orders. These provisions provide that the requirements for projected allocation of orders are identical, whether or not the company is classified under Section 1 or 1 bis or Book III of the AMF General Regulation.
Moreover, the basic programme of operations shall describe the procedure for the projected allocation of orders. This shall also describe the situations and conditions in which the final allocation may differ from the predicted allocation that has been determined, in principle.

However, it is not necessary to present the internal procedures relative to this subject in detail, which must be defined and reviewed under the sole responsibility of the asset management company.

Order routing

The application shall contain a detailed diagrammatic representation of the route through which orders transit, and the persons or services involved at each stage.

3.2.5. Best execution / selection policy

Best execution / selection policy

Pursuant to Articles L. 533-18 of the Monetary and Financial Code, 314-75 of the AMF General Regulation and 28 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012[19], the asset management company must put in place a best selection policy which should include, in particular:

- the criteria used for selecting order executors;
- consideration of the execution policies of selected entities;
- The conditions in which specific instructions may be transmitted by the asset management company to order executors and the consequences of these specific instructions;
- the conditions in which the asset management company monitors the relevance of its selection and calls it into question, where appropriate.

This policy must be the subject of continuous monitoring to ensure the effectiveness of the policy and of the execution quality by the selected entities as well as an automatic annual review (or as soon as an event affects the ability of the asset management company to achieve the best outcome for the client).

The programme of operations shall include the policy for selecting the entities to which the asset management company intends to send the orders resulting from its investment decisions. However, it must make it possible to understand the structure chosen by the asset management company for defining and updating it.
It should be recalled that these entities are selected based on price, cost, speed, probability of execution and payment, size, the nature of the orders and any other considerations relating to order execution. However, the quality of analysis or research services is not among the accepted selection criterion of an execution intermediary.

It should be recalled that when orders are related to investment decisions taken on behalf of professional clients or the UCITS/AIFs, the relative importance of these factors is determined by referring to the criteria set out in Article 314-69 of the AMF General Regulation (or in paragraph 2 of Article 27 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012 for asset management companies subject to Title 1bis of Book III of the AMF General Regulation.

[19] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

When the orders relate to investment decisions made on behalf of non-professional clients, the best possible result is determined on the basis of the total cost as defined in section I of Article 314-71 of the AMF General Regulation.

Execution by the asset management company of orders resulting from its investment decisions

When the asset management company itself executes orders resulting from its investment decisions, it shall establish and implement an order execution policy allowing it to achieve the best possible result for its mandates and UCITS/AIFs.

An asset management company may be admitted as a member of a market when it does not receive and transmit orders on behalf of third parties, and shall only execute orders on the market in question originating from managed portfolios. This point must then be subject to a specific description in the programme of operations.

It is lastly recalled that the company must also have, in situations where this is justified by the type of activities carried out, a policy aiming to prevent risks in terms of insider dealing and market manipulation.

Monitoring positions and determining net asset values

The programme of operations shall indicate:
1. The procedures for monitoring positions and portfolios regarding, in particular, risk limits and regulatory and/or contractual constraints as well as UCITS or AIF ratios;
2. Procedures for determining the net asset values of UCITS or AIFs.

In this respect it should be recalled that, regardless of the model adopted for determining the net asset value, particularly in the case of delegation of administrative and account management of the vehicles managed, validation of this value remains the full responsibility of the asset management company.

3.2.6. Control system

With respect to the provisions applicable to it[20], in its programme of operations, the asset management company must describe:
1. The resources available for carrying out controls;
2. The general arrangements for these controls;
3. The control and monitoring procedures that it intends to put in place. These resources, arrangements and procedures shall be warranted by the nature, size, complexity and diversity of the asset management company's activities.

The asset management company shall have a policy, arrangements and a control plan suited to its activity and which respond to all of the provisions of the AMF General Regulation.

Pursuant to Articles 312-2 and 313-3 of the AMF General Regulation and section a) of paragraph 3 of Article 61 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012[21], **the person or persons responsible for compliance and internal controls (RCCI) must have the independence, authority, resources and expertise necessary to fulfil their task effectively. They must also have access to all the relevant information required for carrying out their task.**

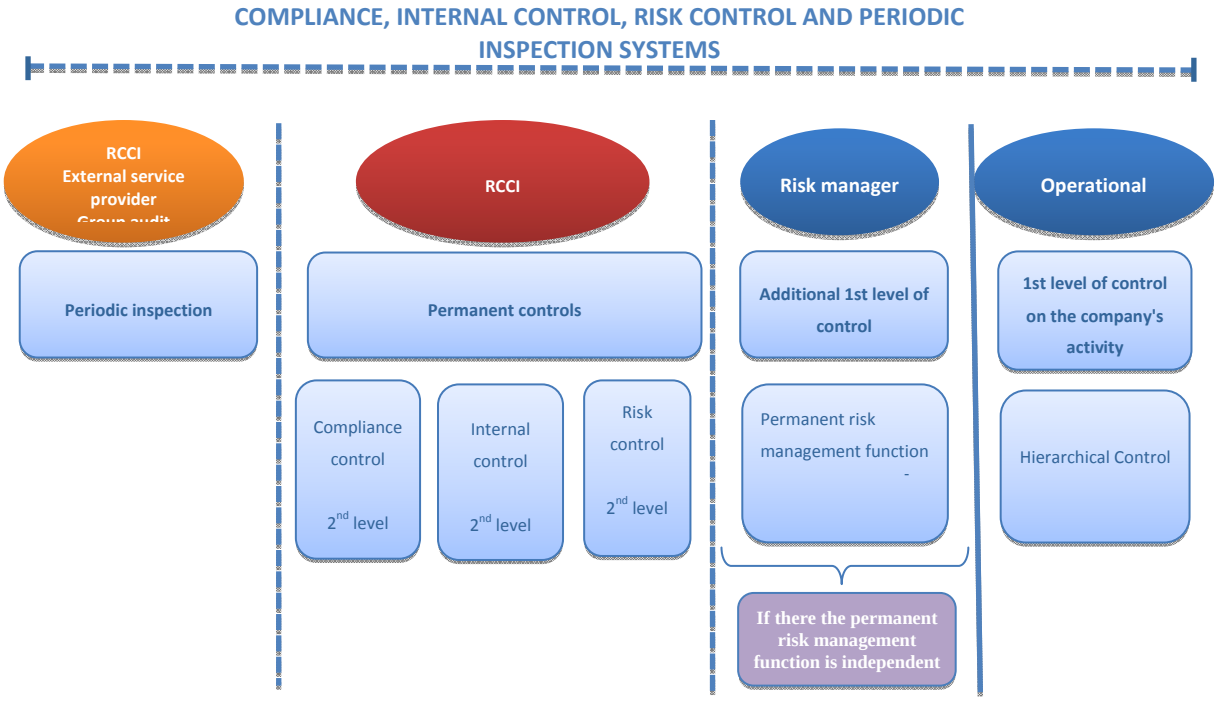
The items developed below only include essential elements linked to the asset management company's programme of operations.

[20] Articles 311-1, 312-8 and 313-54 of the AMF General Regulation or, for asset management companies subject to Title I bis of Book III of the AMF General Regulation for their AIF management activity, Articles 316-3, 317-7 and 318-1 of the AMF General Regulation.
[21] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

For more detail on applying compliance and internal control systems, or even risk management systems, please refer to AMF position-recommendations DOC-2014-06 "*Guide relatif à l'organisation du dispositif de maîtrise des risques au sein des sociétés de gestion de portefeuille"* (Guide to arranging risk management systems in asset management companies) and DOC-2012-17 "*Exigences relatives à la fonction de conformité*" (Compliance function requirements), as well as AMF instruction DOC-2006-09 "*Examen pour l'attribution des cartes professionnelles de responsable de la conformité et du contrôle interne et de responsable de la conformité pour les services d'investissement* " (Exam for awarding RCCI professional licences for investment services) and AMF instruction DOC-2012-01 "Risk management organisation for collective investment undertaking management activities and discretionary portfolio management investment services".

Specifically, AMF position-recommendation DOC-2014-06 contains policy elements concerning, in particular, the organisation of the compliance function and the outsourcing of its tasks, as well as the organisation of compliance controls, internal controls and periodic inspections.

The AMF recalls that the asset management company's responsibility to meet its professional obligations rests with its senior managers, whether the control be carried out internally or externally by a service provider.



3.2.6.1. Compliance and internal control system

Organisation of the compliance and internal control system

In accordance with Article 313-54 of the AMF General Regulation and section a) of 1 of Article 57 of Commission delegated regulation (EU) No. 231/2013 of 19 December 19 2012[22], the asset management company shall establish and maintain operational decision-making procedures and a well-documented organisational structure that clearly defines lines of authority and assigned functions and responsibilities.

The programme of operations must thereby present, clearly and legibly, the organisational structure chosen by the asset management company, making it possible to identify the persons in charge of compliance and internal control functions, and the allocation of roles between the different employees.

When the asset management company has designated several compliance and internal control officers (RCCI), it should clearly establish the allocation of roles and responsibilities between the persons concerned.

RCCI senior manager and outsourcing of control tasks

When the asset management company or its membership group does not reasonably have the financial resources to assign a person to the compliance function, it may therefore appoint one of its senior managers as compliance officer and internal control.
If this manager exercises financial management roles, sales roles or any other activity liable to create conflicts of interest, the asset management company must outsource operational compliance and internal controls tasks. When outsourcing these tasks, the senior manager remains responsible for the compliance and internal control systems.

In such a case, the authorisation application shall include the draft outsourcing agreement signed with the provider, mentioning, in particular, the scope of intervention, the anticipated stakeholders (the person actually carrying out the controls and the person assuming responsibility for this), the number of days of intervention anticipated per month and per year for the outsourced control tasks. In this case, the opinion of a board of examiners for awarding an RCCI professional licence mentioned in Articles 313-42 and 318-33[23] of the AMF General Regulation may be requested by AMF departments in order to decide on the conditions for outsourcing RCCI functions pursuant to Articles 313-44 and 318-35[24] of the AMF General Regulation. The opinion of the board being given after approval of the asset management company, if unfavourable, the departments may subsequently request organisational changes within the asset management company. No professional licence will however be awarded to an officer of service provider following the opinion of the board.

As indicated by AMF position-recommendation DOC-2014-06 - *Guide relatif à l'organisation du dispositif de maîtrise des risques au sein des sociétés de gestion de portefeuille* (Guide to arranging risk management systems in asset management companies), when the asset management company entrusts the function of RCCI to an external service provider or to an employee of another group entity, it must at all times ensure that the amount of time devoted to exercising the function of RCCI is sufficient in terms of the activity and its size. The compliance function remains permanent.

The AMF assesses the need to internalise the RCCI function within the asset management company according to the size of the assets, the number of portfolios managed or even the complexity of management strategies in place.

[22] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.
[23] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.
[24] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

3.2.6.2. Risk management

Pursuant to Article 313-53-4 of the AMF General regulation and paragraph 1 of Article 39 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012[25], the investment services provider establishes and keeps operational a permanent risk management function.

The investment services provider must adopt appropriate and effective processes and procedures in order to:

- permanently detect, measure, manage and monitor risks to which the portfolios they manage are exposed or liable to be exposed;
- ensure compliance with the qualitative and quantitative limits that it sets for each portfolio and which involve at least the market risk, credit risk, liquidity risk, counterparty risk and operational risk.

The program of activity shall describe this function in accordance with AMF instruction DOC-2012-01 relative to the organisation of the collective investment management and discretionary portfolio management activity in terms of risk management and to AMF position-recommendation DOC-2014-06 - *Guide relatif à l'organisation du dispositif de maîtrise des risques au sein des sociétés de gestion de portefeuille"* (Guide to arranging risk management systems in asset management companies).
In accordance with AMF position-recommendation AMF DOC-2014-09, when the asset management company does not put in place a permanent risk management function independent of the organisational structure and which is a function of operational units, it must justify this with the AMF by indicating in its programme of operations the reasons leading them to derogate from this obligation.

Moreover, certain instances of delegated financial management require the creation of a permanent risk management function that is independent of the operational units in terms of hierarchy and function (cf. 3.2.8.3).

3.2.7. Valuation of the instruments used

The methods used for valuing instruments (distinct from determining net asset values within the context of collective investments) must be described in the appropriate supplementary sheets (the company may use the main body of the programme of operations to succinctly describe the main principles applicable and the organisational structure in place within this framework). Furthermore, if the asset management company is fully subject to the AIFM Directive for its AIF management activity (if box A2A of the authorisation form is ticked), specific information on the independent evaluator needs to be included in point 6 of the AIFM supplementary sheet.

The principles relative to the organisation of asset management companies in terms of valuing financial instruments are given in AMF instruction DOC-2008-06.

3.2.8. Outsourcing and delegation

The provisions relative to outsourcing are laid down in Articles 313-72 to 313-76 of the AMF General Regulation while those relative to delegation of UCITS or AIF management are laid down in Articles 313-77 and 318-58[26] of the AMF General Regulation.

[25] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.
[26] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity. This article refers to Articles 75 to 82 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012.

3.2.8.1. General conditions

The asset management company shall define in its programme of operations the tasks and functions which it intends to outsource/delegate in the form of a summary table including, in particular:

- the persons or service in charge of selection and monitoring;
- the main criteria used (main criteria or objective reason);
- the valuation period;
- the information shared with service providers/delegates, the controls carried out and the defined scope.

asset management companies retain added value in managing the risks associated with the structure in place.
This added value lies in the defining and formalising a selection and monitoring process, by the delegate, based on suitable and differentiating criteria and the ability of the asset management company to assess the service provided in order to monitor it.

Outsourcing/delegation must not be contrary to the principle of having adequate resources at all times, be likely to cause a conflict of interests, nor hinder effective supervision by the AMF.

Outsourcing/delegation must not significantly harm the quality of internal controls and must not prevent the AMF from checking that the asset management company is fully meeting is obligations.

Any outsourcing on such a scale that the asset management company would become a letterbox company shall be regarded as a contravention of the conditions that the asset management company is required to meet in order to obtain and retain its authorisation.

The asset management company and its senior managers remain fully responsible for fulfilling their professional obligations.

The asset management company must maintain the necessary expertise to monitor the outsourced/delegated tasks or functions.

The outsourcing agreement

Recommendation
It is recommended that any outsourcing/delegation agreement include:
1. The functions, tasks and scope of outsourcing/delegation;
2. The responsibility of the asset management company;
3. A description of the providers/delegate's qualitative and quantitative resources as well as possible authorisations;
4. The method of remunerating the provider/delegate;
5. The asset management company's terms and conditions for the provider/delegate to disclose information to the company, particularly in the case of dysfunctions or any type of event liable to have a significant impact on their ability to effectively carry out the outsourced tasks or functions and in compliance with the professional obligations incumbent upon it;
6. The conditions for protecting confidential information relating to the asset management company or its customers by the provider/delegate;
7. A description of the emergency plan put in place by the asset management company and provider/delegate allowing for the recovery of operations after a disaster and providing for the regular monitoring of backup capacities;
8. A description of appropriate measures that the asset management company will take if it appears that the provider/delegate risks not fulfilling its tasks or functions effectively or complying with the professional obligations applicable to them;
9. The ability of the outsourcing/delegating asset management company to monitor the provider/delegate, in particular, in terms of access to data relating to the delegated tasks or functions and the professional premises of the provider/delegate;
10. The terms and conditions of terminating the outsourcing/delegation agreement, and its duration;

11. The applicable law.

If the asset management company is fully subject to the AIFM Directive for its AIF management activity (box A2a of the authorisation form being ticked), supplementary sheet 1.1.bis relative to AIFM authorisation must also be completed regarding the conditions of delegated tasks.

3.2.8.2. Provider/delegate controls

It is up to the asset management company to demonstrate that its control systems makes it possible to monitor, at any moment, delegated management or outsourced tasks, and to manage additional risks associated with outsourcing/delegation.
This ability to monitor requires an understanding of the outsourced/delegated activities.

The control system is standardised and traceable. It shall generally be based on:
- A process for evaluating the delegated company/provider, making it possible to identify the additional risks associated with delegation/outsourcing and to verify compliance with regulatory requirements (the delegate is authorised for asset management, conditions for terminating the agreement, monitoring the quality of services, etc.) ;
- the implementation of appropriate permanent controls and periodic inspections, taking into account the controls already carried out by the delegated company/provider as well as the additional risks identified in the previous phase;
- a system for reacting to detected anomalies.

This control shall include, on the one hand, the existence of human and technical resources, and clear procedures for reporting and alerting and, on the other hand, the existence of an inspection by the delegating company/outsourcer on the delegated company/provider.

3.2.8.3. Specific conditions for delegating portfolio management

Portfolio management includes both financial management and risk management

a) Specific conditions for delegating the financial management of collective investments

Financial management of UCITS or AIFs shall fulfil the conditions defined in Article 313-77 and 318-58[27] of the AMF General Regulation, depending on the case.
In particular, it may only be delegated to a person authorised for asset management, which includes any person authorised to manage collective investments by a public authority or provide portfolio managmeent services for third parties.

The specific conditions relative to the delegation of financial management of a UCITS or AIF by an asset management company must be detailed in Appendix 1.1 of AMF Instruction DOC-2008-03.

The asset management company wishing to delegate the financial management of a collective investment, in application of Article 313-77 or Article 318-58 of the AMF General Regulation, to an entity which has its registered office or place of business, respectively, in a State that is not party to the agreement on the European Economic Area or in a third country, shall send the AMF confirmation of the delegate's authorisation to manage collective investments or provide portfolio management services for third parties.
Cooperation between the AMF and this company's supervisory authority must be ensured.

[27] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

The planned scope of delegation must be presented in summary form in the programme of operations
The following information must be specified:

- the amount of assets delegated (including the direct management/delegated management ratio), distinguishing, if relevant, depending on the nature of the strategies;
- the types of strategies implemented and the financial instruments used in order to identify those that generate an increased level of risk, both in terms of risks related to the strategy itself (market risk, operational risk, legal etc.) and in terms of the difficulties that these could create regarding effective controls carried out by the asset management company on the activity of the delegated company;
- the controls put in place within this context;
- the procedures for selecting delegate companies from among eligible firms (due diligence carried out on the risks associated with the legal and regulatory environment of providers, on the one hand, and those carried out on the resources and organisation of these on the other);
- the procedures and due diligence implemented by the asset management company enabling it to comply with the provisions of Articles 313-77 and 318-58[28] of the AMF General Regulation relative to delegating management of UCITS and AIFs.

Concerning the due diligence, three cases may be highlighted;

- when the asset management company delegates a management strategy the risk/reward profile of which is similar to that of strategies it implements directly, delegation requires:
  - on the one hand, adapting the existing control system to the fact that management will be delegated and will be the subject of a first level control within the delegated company. This usually involves the delegating asset management company adjusting the nature and frequency of certain controls according to its assessment of the ability delegated company to exercise and monitor its activities in accordance with the applicable rules;
  - on the other hand, identifying the operational risks associated with the delegation, and taking the necessary steps to manage and control the effectiveness of this management.

- when the asset management company delegates management to an entity belonging to the same group, the risk/reward profile of which differs from the strategies that it implements directly, assessment of the effectiveness of the control system implemented by the delegating management company shall take into account the existence of a control system on a group level. It would in fact not be particularly relevant to require duplication within the delegating management company of controls already implemented within the context of group control systems;
  For example, this may concern an asset management company belonging to a group that has decided to structure itself around units of expertise, locating all the expertise related to a type of management in one place. However, it must maintain added value in this format and ensure the reality of the delegated company's controls, being able to assess the quality of the delegated management and performance delivered;
- when the asset management company delegates to an entity not belonging to its management group, the risk/reward profile of which differs to the strategies it usually implements, it is up to it to demonstrate that it remains nonetheless able to control the delegated activities and the additional risk associated with the delegation (due diligences, *a priori*, and delegation in progress, determining criteria, limits applicable to delegated companies, control procedures and relevant indicators). Under these circumstances, the delegating asset management company shall be required to have a risk control function that has suitable experience for the strategy and underlying asset, and the necessary capacities to ensure effective control.

<u>Balance between non-delegated management and delegated management activities</u>

[28] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

The prohibition of letterbox companies (the provisions of Articles 313-72, 313-77 and 318-58 of the AMF General Regulation) leads the AMF to consider that the asset management company may not delegate the entire management of collective investments and mandates for which it is responsible.

The weight of delegated activities cannot therefore significantly exceed that of the non-delegated activities.

The weight of delegated activities compared to non-delegated activities should be assessed according to criteria appropriate to each situation. The AMF has therefore been led to take into account, when applications have been submitted by asset management companies, the amount of outstanding debt, the number of managers, the organisation of risk management (specifically the number of risk controllers), the number of funds, the structure in units of expertise within a group, or even the distribution of turnover between delegated management and management carried out directly.

By contrast, an asset management company that only manages one delegated portfolio must justify their autonomy and the ongoing nature of their activity.

b) Specific conditions for delegating risk management

As a reminder, in accordance with instruction DOC-2012-01 and position-recommendation DOC-2014-06, an asset management company shall establish and maintain a permanent risk management function operational. This function shall be provided by, depending on the situation:

- a senior or operational manager (member of the management team), as long as independence from the management team is not required;
- a Risk Manager who will be in charge of this function in circumstances where independence is necessary.

Recourse to a third party for carrying out the risk management activity must be justified in accordance with Article 4 of instruction DOC-2012-01, it being understood that the asset management company remains responsible for the assigned activities, that it retains the resources and expertise necessary to supervise the outsourced tasks or functions effectively and, in a general sense, that this organisation does not degrade the quality of the risk management system.

3.2.9. Conflicts of interest

Conflicts of interest policy

In accordance with Articles 313-20 of the AMF General Regulation and 31 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012[29]:

- the asset management company shall establish and maintain an effective conflicts of interest policy, set out in writing and appropriate to their size and organisation and to the nature, scale and complexity of their business.
- Where an asset management company is a member of a group, its conflicts of interest policy must also take into account any circumstances, of which it is or should be aware, that may give rise to a conflict of interest as a result of the structure and business activities of the other members of the group.

This policy shall be established in accordance with articles 312-18 to 313-22 of the AMF General Regulation or, for asset management companies subject to Title Ibis of Book III of the AMF General Regulation for their AIF management activity, Articles 318-13 the General Regulation and 30 to 36 of the Commission delegated regulation (EU) No. 231/2013 of 19 December 2012.

The asset management company is required to identify the main sources of conflicts of interest resulting either from its organisation or from its main activities (private equity, real estate) and ancillary activities.

[29] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

The programme of operations must detail the risks and supervisory measures linked specifically to their organisation and activity. Complete mapping must be permanently suitable, updated and made available to the AMF.

For example, a certain number of situations encountered regularly should be the subject of a specific description, where applicable:
- co-existence of own-account and third-party activity within the group;
- sharing premises;
- transactions in non-listed securities, both debt and equity, on the same issuer and within different portfolios etc.

Other situations are specified in AMF position-recommendation DOC-2009-23 "*La gestion des conflits d'intérêts dans les sociétés de gestion de portefeuille gérant des OPCI*" (Managing conflicts of interest in asset management companies managing real estate investment trusts). They concern, in particular, "shared" senior managers, the origination of investment targets, the distribution of targets, provider selection or even the independence of the investment decision. **The AMF extends the scope of this position-recommendation to the management of all asset classes (for example, REITs, private equity, loan selection, etc.).**

Recommendation
The transfer of non-listed assets to a regulated market by an asset management company, whether the fund is in the processes of being liquidated or not, towards other collective investments managed by the company or an entity within its group, or within management in which it has a direct or indirect interest, automatically raises major concerns in terms of the conflicts of interest generated and the valuation conditions chosen. It is recommended that this type of situation be avoided. The AMF provides no validation of procedures relating to these transfers (for example, when updating programmes of activity) or *a fortiori* to individual transactions that could be presented to it, these operations falling within the sole responsibility of the asset management company.

Managing the availability of the asset management company

In accordance with Articles 312-4 and 317-3[30] of the AMF General Regulation, "Own funds, including additional own funds, must be placed in liquid assets or assets readily convertible to cash in the short term, and may not include speculative positions."
The asset management company must be able to confirm, at any time, that it respects the minimum capital requirement.

Furthermore, it is recalled that cash pooling[31] within the group is prohibited for the minimum capital requirement portion and the provisions of Articles 312-4 and 317-3 must be followed for additional capital.

Acceptance of a cash pooling format for the additional portion shall also require the asset management company to follow all of the following general principles:
- the establishment of a reserve of additional capital allowing the company, if necessary, to not draw upon the minimum capital to cover the needs inherent in its activity (a change in the level of capital linked to an increase in general costs, operating expenses etc.) It remains the responsibility of the asset management company to define this minimum amount in relation to its estimated needs;
- the immediate availability upon first request, initiated by the management company, of an amount equivalent to the sums placed within cash pooling;
- a precise identification of investment methods expressly indicating exclusions (financial futures instruments etc.); and

[30] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.
[31] Cash pooling allows companies within a group to pool their cash in a single bank account, generally that of a holding company. The other bank accounts included in this pool are regularly debited or credited via this central account.

- The integration into the monitoring programme of an investment methods review for capital made available within the framework of cash pooling.

More generally, the programme of operations must review the policy maintained by the asset management company concerning the management of availability (both for the additional portion as well as for the portion below the minimum capital requirement0.

3.2.10. Anti-money laundering and the financing of terrorism

The programme of operations is not intended to describe the entire system that the asset management company intends to put in place concerning anti-money laundering and the financing of terrorism, but must help to understand the organisation, the measures for assessing and managing the risks involved as well as the monitoring process aimed at detecting any suspicious transactions, and to report to TRACFIN as soon as the company knows, suspects or has good reasons to suspect that a transaction is linked to money laundering or terrorist financing.

The programme of operations must therefore focus on the salient points of the legislative and regulatory framework, in accordance with Articles 315-50 et seq. or 320-14 et seq.[32] of the AMF General Regulation:

- designate a manager responsible for anti-money laundering and terrorist financing;
- identify a TRACFIN correspondent and declarant[33]. Any change in incumbent must be notified immediately to the AMF;
- contain a categorisation of the risks of money laundering and terrorist financing specific to the management company's degree of exposure, assessed in particular according to the nature of the products and services offered, proposed transaction conditions, the distribution channels used as well as the clients' characteristics. This categorisation of risks must associate levels of vigilance with the levels of risk identified and needs to be scalable (using procedures to be confirmed) to ensure the most effective system possible;
- list the formalised procedures that the asset management company will implement (if necessary, operational, internal controls and reporting of suspicious transactions to TRACFIN) pursuant to the legislative and regulatory provisions in force;
- specify methods for regularly disclosing information and the training provided by the asset management company to make persons acting on its behalf aware of its obligations in anti-money laundering and the financing of terrorism.

The AMF has published guidelines specifying certain provisions of the General Regulation pertaining to anti-money laundering and terrorist financing, and joint guidelines with TRACFIN on reporting obligations pertaining to anti-money laundering and terrorist financing (position-recommendation AMF DOC-2010-23).

3.2.11. Record keeping and archiving

Record keeping and archiving

The programme of operations shall describe the computer equipment, sources of information and software being considered, as well as the IT security tools (access to data and systems, network security, audit trails, backups etc.) in light of the security objectives mentioned in Articles 313-55 and 313-56 of the AMF General Regulation and in paragraphs 2 and 3 of article 57 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012[34].

[32] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.
[33] It is also the responsibility of the asset management company to communicate their identity to FRACFIN.
[34] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

The IT security procedures shall be made available to the AMF.All indicated are the record-keeping and data storage methods used in conformity with Articles 313-48 to 313-53 of the AMF General Regulation and those set forth in Regulation (EC) No 1287/2006 of 10 August 2006 as well as those in Articles 64 to 66 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012[35].

Recommendation
The AMF recommends that asset management companies put in place procedures and measures to enable them to retain a record of promotional communication made in non-durable formats, such as social media, when this is deemed necessary due to the type of information communicated and, notably, to enable the asset management company to handle any complaints or disputes that may arise. This archiving must be performed in accordance with legal and regulatory provisions in force relating to storing data.
If archiving is offered by the social media provider, the asset management company may use said archiving service as long as it is stafisfied that the process used meets the company's requirements and is in accordance with legal and regulatory provisions in force.
The AMF also recommends that a long-term, permanent policy governing archiving is adopted.

Pursuant to Article 313-49 of the AMF General Regulation, the asset management company shall retain the records referred to in Articles L. 533-8 and in 5 of Article L. 533-10 of the Monetary and Financial Code for at least five years[36].
The agreements that set out the respective rights and responsibilities of an investment services provider and a client within the framework of a service agreement, or the conditions that the investment services provider applies when providing services to the customer, are kept for at least for the duration of the relationship with the client".

The programme of operations must also clearly and succinctly describe the business continuity plan.

3.2.12. Asset management company premises

An asset management company shall have its registered office in France and must have independent premises.
The programme of operations shall indicate the premises in which it conducts its business. If the asset management company is not the owner, the agreement under which the premises are to be used shall be attached to the authorisation application. The agreement shall last a minimum of 12 months accompanied by a clause of a minimum notice period of 3 months.
The programme of operations shall specify, where necessary, the identity and activity of the company with which it shares premises and the steps taken by the asset management company to guarantee the confidentiality of its activities, to ensure its independence and to prevent any risk of conflicts.

3.2.13. Remuneration policy

The programme of operations shall summarise the employee remuneration policy broken down into the type of roles carried out (senior managers, managers, control function managers). Please refer to the guides and professional codes in this matter.

This part must be detailed in the supplementary sheet relative to AIFM authorisation for asset management companies fully subject to the AIFM Directive for their AIF management activity (if box 2Aa of the authorisation form is ticked). Reference can then be made to this sheet.

[35] For asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.
[36] Please also see paragraph 1 of Article 66 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012 for asset management companies subject to the title 1bis of book III of the AMF General Regulation for their AIF management activity.

4. The marketing of products and sales policy

In accordance with AMF position DOC-2014-04 ("Guide to UCITS and AIF marketing regimes in France"), the act of marketing units or shares of UCITS or AIFs consists in their presentation to the French territory by different means (advertising, direct marketing, advice etc.) with a view to encouraging an investor to subscribe to or purchase them.
However, the following shall not be considered acts of marketing in France:

- the purchase, sale or subscription of units or shares of a UCITS or AIF in response to a client's unsolicited request to purchase a specifically designated UCITS or AIF, provided that the investor is authorised to do so;
- the purchase, sale or subscription of units or shares of a UCITS or AIF under the terms of a third party portfolio management agreement, provided that such financial instruments are authorised in the investor's portfolio;
- the purchase, sale or subscription of units or shares of a UCITS or AIF within the framework of the financial management of a UCITS or AIF, provided that such financial instruments are authorised in the assets of the UCITS or AIF.

It is up to distributors of financial instruments to determine under their own responsibility, and under the supervision of the competent authorities and jurisdictions if they effectively carry out marketing operations on French territory.

It follows from this definition that the marketing of UCITS or of AIFs may lead the asset management company to provide investment services, for example, investment advice and/or receiving and transmitting orders for third parties.

The asset management company may market collective investments that it manages or those managed by another company asset management company after characterizing the investment services that will be provided within the framework of this marketing, and request authorisation for this purpose in accordance with Article L. 532-1 of the Monetary and Financial Code and under the conditions of AMF instruction DOC-2008-04 taken pursuant to section I of Articles 411-129 and 421-26 of the AMF General Regulation. Furthermore, it can market the collective investments that it manages or those managed by another asset management company using the direct marketing of financial or banking services, in accordance with the provisions of Articles L. 341-1 et seq. of the Monetary and Financial Code.

The programme of operations must describe the marketing policy chosen by the asset management company in a general way.

It is recalled that the AMF has published position-recommendation DOC-2014-05 relative to agreements on the distribution of financial instruments which specifies its expectations concerning the content of the agreements referred to in Article L. 533-13-1 of the Monetary and Financial Code and their situation in the chain of distributors.

4.1. The marketing of products by the asset management company

The asset management company shall specify in its programme of operations its structure for distributing instruments for which it provides management services (collective investments or mandates). It shall also put procedures in place whch enable it to define and monitor rules regarding information published about the company by its employees, executive directors and distributers across all channels of communication, including social media.

In particular, the asset management company shall specify, for each of its products:

- concerning the clients:
  1. the target client: general public, professional client or equivalent etc.;
  2. the origin of this clientele: professional network, group network, direct financial or banking marketing, platform financial investment advisor etc.;

3. the documentation sent to the customer and arrangements to follow this up: regularity of items sent, validation of documentation, etc.

- concerning the distributors of these financial instruments:
  1. the distribution channels and status of the distributors: tied agents, asset management companies, financial investment advisor, direct banking or financial marketers etc.;
  2. the type of contract entered by the asset management company and distributors (distribution agreement, direct banking or financial marketing agreement, etc.);
  3. their means of remuneration (retrocessions on management fees, retrocessions per transaction etc.);
  4. the methods of monitoring distributors:
     When the financial products managed by the asset management company are marketed by third parties, the asset management company and these distributors must comply with the obligation to draw up an agreement referred to in Article L. 533-13-1 Of the Monetary and Financial Code.
     The asset management company must on this basis specify in the programme of operations the measure in place to ensure the compliance of marketing materials used by distributors.
     When the asset management company manages funds banned from sale in France, it must state the measures taken to respect this ban.

Recommendation
For social media, the AMF recommends creating professional accounts that are entirely separate from the private accounts of employees and executive directors. It is also preferable that these professional accounts are clearly identified as such and are the only authorised means of communication regarding the asset management company's activity.

When the asset management company uses financial investment advisor ("FIAs") to distribute its products, they are reminded that AMF position-recommendation DOC-2006-23 - Questions and answers on the rules that apply to financial investment advisers - clarifies the other regulated activities that the FIA may carry out.
In this document, the AMF indicates that, if the FIA status does not in principle exclude other regulated activities, the FIA status combined with the direct marketing of banking or financial services by the same professional vis-à-vis the same client and in relation to the same service, would make it hard for the targeted investor to understand which regime applied to him.
This situation is justified by the investor's need for perfect legibility of the legal relationship that unites them with the distributor, and the consequences in terms of responsibility.
This position does not prevent an asset management company from appointing, as a direct marketer of banking and financial services, a distributor who also has FIA status. Nevertheless, to be compliant with the aforementioned situation, the legal framework in which the distributor is acting regarding the same service vis-à-vis a client must be clear: when providing this service, either the distributor will act solely a director marketer on behalf of the asset management company, or solely as an FIA.
Furthermore, if the asset management company does not wish to appoint its FIA distributors as direct marketers of financial or banking services, the agreement must not be ambiguous about the fact that it is not a mandate for direct marketing. On the side of the FIA, they cannot directly market their own advisory services to clients.

4.2. Marketing third-party products by the asset management company

The asset management company shall specify in its programme of operations, for each type of financial products that it intends to market (collective investments, insurance products, etc.):

1. the target client: general public, professional client or equivalent etc.;
2. the origin of this clientele: professional network, group network, direct financial or banking marketing, platform financial investment advisor etc.;

3. the documentation sent to the customer and arrangements to follow this up: regularity of items sent, validation of documentation, etc.;
4. the type of agreement entered between the asset management company and the manufacturer of the marketed products (in accordance with Article L. 533-13-1 of the Monetary and Financial Code) and the remuneration methods as a distributor.

It is recalled that the asset management company is required to comply with the obligation to establish, with the manufacturer of the financial instruments that it markets, the agreement referred to in Article L. 533-13-1 of the Monetary and Financial Code.

4.3. Conduct of business rules

When the asset management company is led to provide one or more investment services to the investor, it must comply with the conduct of business rules laid down by the Monetary and Financial Code and AMF General Regulation.

Within the framework of marketing units or shares of UCITS and AIFs in accordance with section I of Articles 411-129 and 421-26 of the AMF General Regulation "*Without prejudice to the legal and regulatory provisions applicable to the provision of the service of investment advice, a management company that markets the units or shares of CIS under its management shall comply with the rules of conduct applicable to the service of order execution for third parties while a company that markets the units or shares of CIS managed by other entities shall comply with the rules of conduct applicable to the service of order reception and transmission for third parties.*"

The conditions applicable to these provisions are specified by AMF instruction DOC-2008-04.

Verifying the identity and legal capacity of a new client

Pursuant to Article 314-4-1 of the AMF General Regulation, when dealing with new professional or retail clients, the investment services provider is required to verify their identity, in accordance with legal and regulatory provisions on anti-money laundering and combating terrorist financing.
Where the client has appointed someone to act on its behalf, or where it is appointed by a third party to act on the latter's behalf, the investment services provider shall collect the document attesting to that appointment.

Client categorisation

Within the framework of marketing units or shares of UCITS or AIFs, in regard to the categorisation of its clients, the asset management company shall comply with the provisions of AMF instruction DOC-2008-04.

Furthermore, pursuant to Article L. 533-16, paragraph 5 of the Monetary and Financial Code, Article 314-6 of the AMF General Regulation provides the conditions under which a non-professional client may ask to be categorised as a professional client. Within the framework of client assessment, which must then be conducted by the investment services provider, one of the criteria used is "*the person must have carried out an average of at least ten major trades in financial instruments per quarter over the previous four quarters*." It is recalled that in accordance with AMF instruction DOC 2008-03 (authorisation application package), a transaction is deemed significant in size in the sense of Article 314-6 of the AMF General Regulation when its gross amount is greater than 600 euros.

The programme of operations shall identify the person or persons in charge of client categorisation and their assessment.
The programme of operations must also detail:
- key information allow you to assess the client (suitability/appropriateness);

- the mechanism put in place to exploit the data for each of the marketed products (collective investments, mandates, other [including insurance product]);
- data traceability methods for client categorisation and assessment (procedure and storage).

The AMF may require communication of the management mandate form(s) offered to clients of the investment services provider. It can request modification of the presentation or content of the draft mandates if these do not comply with the provisions of the AMF General Regulation.

5. Freedom to provide services and freedom of establishment

The programme of operations must detail the asset management company's international strategy (activities outside of France).
Once authorisation has been received, if it wishes, the asset management company may use the passporting procedure defined in the AMF instruction DOC-2008-03 carry out activities under the freedom to provide services and free establishment in another Member State of the European Union or, where appropriate, in another State party to the agreement on the European Economic Area .

Management authorisation form (Bloc A of the application form) **Authorised activity via a passport YES/NO**	**UCITS Directive**	**AIFM Directive**	**MiF Directive**
UCITS Management[37]	X		
AIF Management[38]		X	
Discretionary portfolio management	X	X	X
Investment advice	X	X	X
Reception and transmission of orders		X	X

A company may only receive a passport for services or activities for which it has authorisation and only pursuant to the directive to which it is subject.
For example, an asset management company managing UCITS may seek to benefit from the mutual recognition of its authorisation by the UCITS directive, for the purpose of carrying out, under free provision of services or free establishment, the following activities:

- UCITS management authorised on the basis of directive 2009/65/EC including portfolio management, administration and marketing functions.
- discretionary portfolio management;
- investment advice;
- the custodianship and administration of UCI units[39].

[37] UCITS management in the sense of directive 2009/65/EC including portfolio management, administration and marketing functions. A company authorised to manage UCITS may also apply for a passport for custodianship and administration of UCITS (keeping the list of unit or shareholders in their UCITS)
[38] AIF management in the sense of directive 2011/61/EU including portfolio management and risk management functions.
[39] Asset management companies are not authorised to be asset depositories but are authorised to keep the list units or shareholders in their UCITS.

However, an asset management company managing an AIF without being fully compliant with the AIFM Directive may only receive the passport that this directive offers (AIF management, discretionary portfolio management, investment advice etc.).
As a reminder, the AMF does not require an asset management company to have a passport to manage a foreign UCITS or AIF by delegation to another management company[40].

6. Financial information

The authorisation application for asset management companies includes projected accounts (income statement and statement of financial situation over three financial years), as well as the assumptions and arguments used). For asset management companies already incorporated, the application includes projected accounts over three years, including the current year.

Please give details of discretionary portfolio management commissions, UCITS/AIF management commissions, transfer commissions, UCITS/AIF subscription and/or redemption commissions, retrocessions on UCITS/AIF management fees and income related to ancillary activities.

However, the projected accounts must not include outperformance commissions. The asset management company must have accounting procedures in place allowing it to provide timely and appropriate financial information to the AMF, in accordance with the provisions of Article 313-57 of the AMF General Regulation and in paragraph 4 of Article 57 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012.

6.1. Assumptions:

Assumptions must be robust, accurate and based on realistic forecasts.

The asset management company must provide any information tending to show that the assumptions are reasonable and plausible: letters of intent, for example, are important items.
Among this information, the AMC is required to indicate how it intends to operate in the start-up period and how, in the absence of a sufficient level of assets, the asset management company intends to maintain its capital at least equal to the minimum capital requirement.
In the absence of this information, the asset management company will have to strengthen its capital to in order to cover start-up activities.

Asset management companies must complete the projected accounts table in the programme of operations provided in appendix 1.1 of AMF instruction DOC-2008-03.

Growth prospects must be realistic and consistent with the company's expense forecast. For example, the salaries of all persons employed by the management company must be taken into account in expenses and on a realistic level.

6.2. Capital

Important note

European Regulation (EU) 575/2013 of the European Parliament and Council of 26 June 2013 (“the CRR”), in effect since 1 January 2014, is the new European reference for asset management companies in relation to their qualitative capital requirements[41] and calculating their fixed overheads[42]. It is supplemented with numerous delegated acts[43]. Prudential in origin, the new requirements can be far more

[40] This situation does not concern cases where the asset management company is the acting manager of the collective investment (for example, in the case of overall management delegation of a SICAV).

[41] Articles 25-88 of the CRR

[42] Article 97 of the CRR

[43] Including Commission Delegated Regulation 241/2014 of 7 January 2014

complex than the accounts of most asset management companies under French law. The AMF has therefore decided to provide a non-exhaustive but informative overview of the major principles in the CRR. This means that the provisions described under point 6.2.1 concerning fixed overheads and under 6.2.2 are not AMF policy (unless explicitly stated) but illustrations of the requirements that now apply to asset management companies. Asset management companies should therefore refer to the CRR itself, which is directly applicable. Point 6.2.3 explains the ways capital should be invested in accordance with Articles 312-4 and 317-3 of the AMF General Regulation, and includes elements of policy.

Asset management companies are responsible for calculating their capital and the regulatory minimum level that applies to them. It follows that they have to ensure that their capital complies with the CRR and its delegated acts.

Asset management companies are reminded that they have to be able to demonstrate at all times compliance with the regulatory minimum capital requirement that applies to them. The AMF may therefore ask asset management companies to submit a breakdown of their capital on a given date, together with the applicable quantitative requirement. A shortfall in an asset management company's capital could result in the withdrawal of its AMF authorisation.

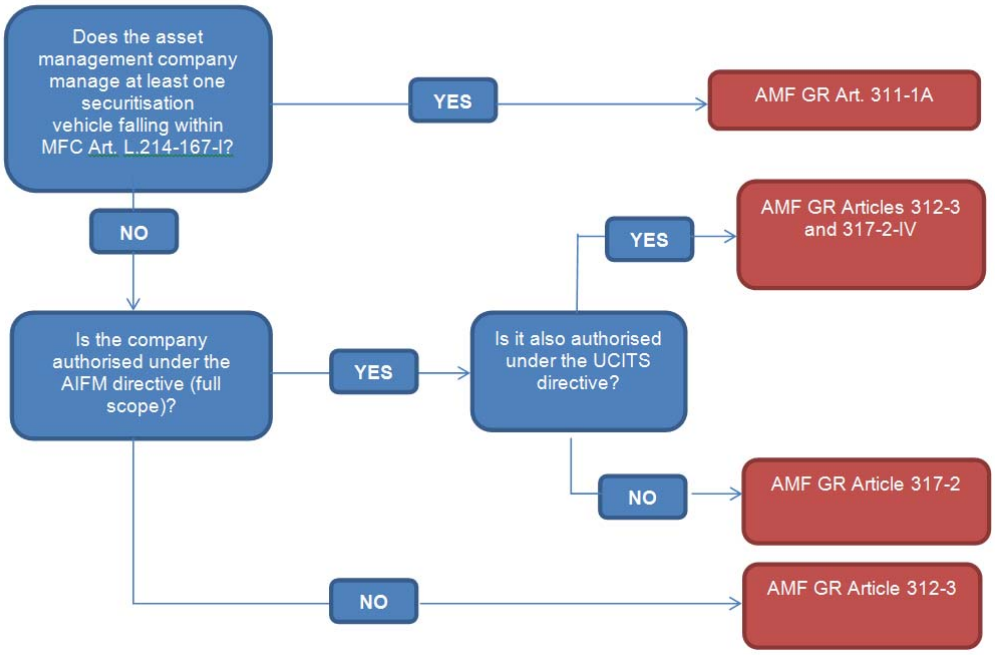
Asset management companies are subject to two types of capital requirements:
- **quantitative requirements**, represented by a minimum levels of capital and own funds (point 6.2.1);
- **qualitative requirements** concerning the nature and characteristics of capital instruments (point 6.2.2) and the investment of capital (point 6.2.3).

6.2.1 Minimum levels of capital and own funds

These requirements determine the minimum levels of capital and own funds that an asset management company must have at all times.

In national law, they are covered in Articles 311-1-A, 312-3 and 317-2 of the AMF General Regulation.

Determining the source of applicable law on minimum capital requirements



The diagram below summarises the minimum capital requirement calculation according to the type of business the asset management company does.

Summary of minimum regulatory requirements relating to initial capital and own funds[1]

Initial capital: 125,000 euros minimum

Minimum capital requirement

General regime

THE HIGHEST OF THE FOLLOWING

- 125,000 euros supplemented, when the net value of managed portfolios excluding mandates exceeds 250 million euros, with additional capital of 0.02% x (net value of *portfolios managed excluding mandates** - 250 million euros)
  The quantitative requirement corresponding to this amount is capped at 10 million euros.
- A quarter of fixed overheads in the previous year

** Managed portfolios excluding mandates*: collective investments under French or foreign law, excluding leverage:
a) in the form of a company, which has delegated overall management of its portfolio to the asset management company;
b) in the form of a fund managed by the asset management company, including portfolios for which it has delegated management but excluding portfolios it manages by delegation.
Outstandings corresponding to the investment, on behalf of managed collective investments, in other in-house funds, is not taken into account here.[2]

+
For asset management companies authorised under the AIFM directive

For asset management companies authorised under the AIFM directive, this amount is supplemented with additional capital requirements calculated according to the two methods presented below.

Covering professional liability risks - 2 possible methods:

Method 1 : **Additional capital**

This is an amount large enough to cover possible professional negligence liability stemming from the asset management company's operations. Any compensation paid to clients over the previous three years must be taken into account.

= a minimum 0.01% of the *value of managed AIF portfolios**

**Value of managed AIF portfolios*: the absolute value of all the assets held by all the AIFs managed by the company, including assets acquired through leverage (derivative instruments are valued at their market price). Amounts corresponding to the investment, on behalf of managed AIFs, in opther in-house AIFs, are taken into account[2].

Method 2: **Professional indemnity insurance**

Such insurance must be adapted to the risks covered, on the basis of the asset management company's liability for professional negligence, and must cover all the risks listed in Article 12 of the delegated regulation of 19 December 2012.

1 Securitisation vehicle asset management companies described in I of Article L. 214-167 of the Monetary and Financial Code are subject to the minimum capital requirements defined in VI of Article 311-1 A of the AMF General Regulation.

2 These provisions adopted by the AMF are based on the ESMA responses given in Section X of the AIFM directive implementation FAQ. Under national law, they apply to all asset management companies established under French law.

Examples

Example 1
Asset management company A is authorised to provide **asset management services for third parties (discretionary mandates) and to manage UCITS.** It manages 10 individual portfolios with total assets of 500 million euros and three UCITS with total assets of 350 million euros.

The minimum capital requirement at 31/12/N = the higher of:
- 125,000 + 0.02% x (350 million - 250 million euros), i.e. 145,000 euros
- a quarter of fixed overheads in year N

Example 2
In addition to its authorisation to provide **asset management services for third parties (discretionary mandates) and to manage UCITS**, asset management company A obtains **authorisation under the AIFM directive (full scope).** It now manages 10 individual portfolios with total assets of 500 million euros, three UCITS with total assets of 350 million euros and eight AIFs with total assets of 600 million euros. The value of the managed AIF portfolios, including leverage, is 900 million euros.

The minimum capital requirement at 31/12/N = the higher of:
- 125,000 + 0.02% x (350 million + 600 million - 250 million euros), i.e. 265,000 euros
- a quarter of fixed overheads in year N
+
additional capital of at least 0.01% of the value of the managed AIFs: 0.01% x 900 million, i.e. at least 90,000 euros
or
professional liability insurance

Example 3
Asset management company B is authorised to **manage UCITS** and is seeking to **manage AIFs with total assets below the threshold set in the AIFM directive (light touch regime)**. It manages three UCITS with total assets of 350 million euros and five AIFs with total assets of 100 million euros.

The minimum capital requirement at 31/12/N = the higher of:
- 125,000 + 0.02% x (350 million + 100 million - 250 million euros), i.e. 165,000 euros
- a quarter of fixed overheads in year N

Additional capital

If the asset management company is subject to Title 1bis of Book III of the AMF General Regulation for its AIF management activity (i.e. if box A2a of the authorisation form is ticked), the supplementary sheet relating to AIFM authorisation must also be completed with regard to the additional capital required by Article 317-2 of the AMF General Regulation to cover operational risks arising from its activity.

Paragraph IV of Article 317-2 of the AMF General Regulation states that an asset management company's additional capital must be "*sufficient to cover potential liability risks arising from professional negligence*". The 0.01% referred to in Paragraph 2 of Article 14 of the Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 in this regard should be considered the bare minimum; the rate actually retained by the asset management company must result from its own analysis of the risks it faces and their quantification.

Fixed overheads

The determination of the fixed overheads used in the minimum capital requirement calculation is governed by the third, fourth and fifth paragraphs of Article 34 of the Commission Delegated Regulation (EU) 241/2014 of 7 January 2014 ("the delegated regulation"), which clarify the provisions of Article 97 of the CRR.

Asset management companies calculate their fixed overheads using a deductive approach. Starting with total operating expenses after the distribution of profits to shareholders, they deduct a range of variable costs to arrive at fixed costs that are recurrent from one financial year to the next.

(*Article 34 ter of the delegated regulation.*) The determination of fixed overheads for the previous year may be summarised as follows:
- Total expenses after the distribution of profits to shareholders as described in the most recent audited financial statements
Minus such items as the following:
- entirely discretionary bonuses paid to staff, managers and/or partners
- any other allocation of profits and any other entirely discretionary variable compensation
- shared payable commissions and compensation directly linked to shared receivable commissions and compensation, which are included in total income when payment of such expenses is subject to the actual receipt of the receivable commissions and compensation
- compensation, brokerage and any other expense paid to clearing houses, stock markets and brokers in connection with transaction execution, recording or clearing
- compensation paid to tied agents[44]
- any non-recurring expense resulting from exceptional activities
The following is added to this amount:
- 35% of compensation relating to tied agents

The AMF considers that retrocessions for products charged to operating expenses in order to remunerate entities appointed by the management company to distribute UCITS or AIFs and/or their marketing activities (but not depositary or valuation expenses) may be deducted from fixed overheads.

(*Article 34 quinter of the delegated regulation.*) When the asset management company has been carrying out its business for less than a year, fixed overheads are those included in its budget for the first 12 months of business, as submitted with its initial authorisation application.

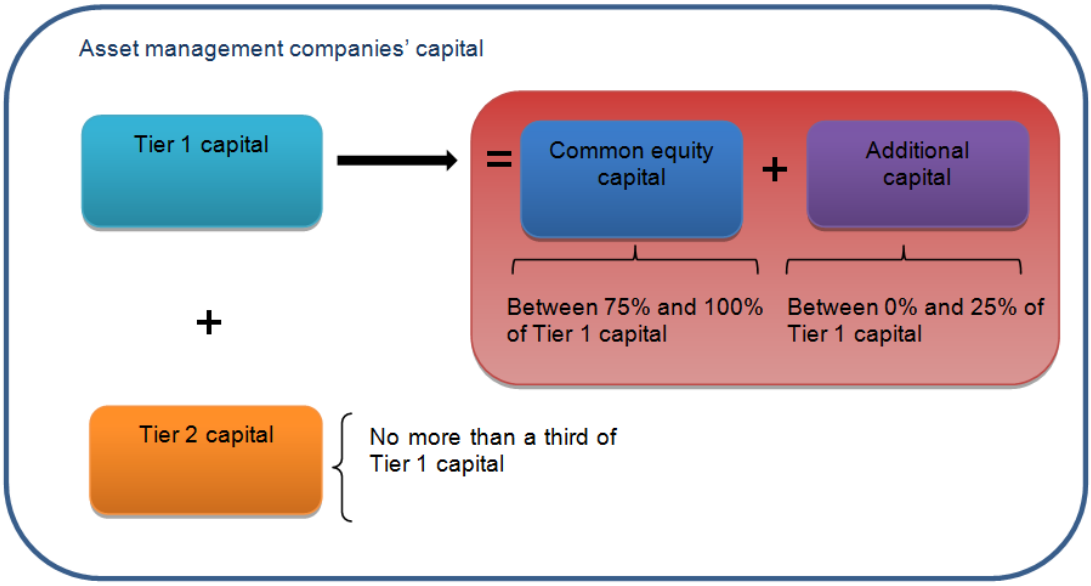
[44] The notion of a tied agent is defined in Article 4 (25) of Directive 2004/39/EC

Article 34 quater of the delegated regulation specifies the conditions for the adjustment of a quarter of fixed overheads when the asset management company's business changes materially.

6.2.2 Qualitative requirements concerning the nature and characteristics of capital instruments

Articles 25 to 88 of the CRR govern the Tier 1 and Tier 2 capital composition and eligibility criteria for asset management companies.

An asset management company's capital is the sum of its Tier 1 and Tier 2 capital[45].



a) Tier 1 capital (*Article 25 of the CRR*)

i. Common Equity Tier 1 capital (*Articles 26-50 of the CRR*)

Composition (*Articles 26 and 27 of the CRR*): for asset management companies, Common Equity Tier 1 capital ("CET1") consists of the following:
- capital instruments meeting the criteria listed in Articles 28 and 29 of the CRR. *Capital instruments eligible for CET1 correspond to equity type instruments*. For example, asset management company A issues fully paid-up preference shares without voting rights but with the right to a preference dividend whose payment is not a disproportionate drain on capital.
- issue premium accounts related to the above instruments
- profit from the previous financial year pending allocation, net of taxes
- reserves
- retained earnings

[45] cf. Article 72 of the CRR

- profits from the current financial year, subject to the conditions listed in Article 26 (2) of the CRR

(*Article 36 of the CRR*.) From which the following are deducted:
- losses for the current financial year
- the non-called up portion of capital
- the dividend amount for the previous year which the asset management company has decided to distribute during the financial year on the date of the general meeting ruling on the company's financial statements
- deferred tax assets that rely on future profitability[46]
- defined benefit pension fund assets held on the asset management company's balance sheet[47]
- intangible assets[48]
- the asset management company's holdings of its own shares within its CET1[49]
- the applicable amount of the asset management company's holdings in financial sector entities' CET1 instruments[50]
- the sum of the items that have to be deducted from the additional capital amount (cf. point ii below) and that exceeds the asset management company's total additional capital.
For example, if the sum of capital instruments and associated share premiums comprising additional capital equals 100 and the total deducted amount is 120, the amount of additional capital is reduced to zero and the remaining deductible portion, i.e. 20, is cut from the CET1 total.

Prudential filters: in order to obtain the final CET1 amount, the filters provided for in Articles 32 to 35 of the CRR have to be applied, if applicable.

ii. Additional capital (*Articles 51-61 of the CRR*)

Composition (*Article 51 of the CRR*): asset management companies' additional Tier 1 capital ("AT1") is comprised of the following:
- capital instruments meeting the criteria listed in Articles 52 to 54 of the CRR. *Instruments eligible as AT1 capital correspond to contingent convertible type bonds*. For example, an asset management company A issues a fully paid-up, perpetual contingent convertible bond that can be converted into a CET1 item if a trigger event materialises.
- issue premium accounts related to the above instruments.

(*Article 56 of the CRR*)From which the following are deducted:
- the asset management company's holdings of its own AT1 instruments[51]
- the applicable amount of the asset management company's holdings in AT1 instruments of financial sector entities[52]
- the sum of items deducted from Tier 2 capital (cf. point b below) that exceeds the asset management company's total Tier 2 capital. For example, if the sum of capital instruments and associated issuance premiums comprising Tier 2 capital equals 500 and the total deducted amount is 900, the amount of Tier 2 capital is reduced to zero and the remaining deductible portion, i.e. 100, is cut from the additional capital total.

[46] cf. Article 38 of the CRR
[47] cf. Article 41 of the CRR
[48] cf. Article 37 of the CRR
[49] cf. Article 42 of the CRR
[50] cf. Articles 43-48 of the CRR
[51] cf. Article 57 of the CRR
[52] cf. Articles 58-60 of the CRR

b) Tier 2 capital (*Articles 62-71 of the CRR*)

Composition (*Article 62 of the CRR*): asset management companies' Tier 2 capital ("T2") is composed of the following:
- capital instruments and subordinated loans meeting the criteria listed in Articles 63 and 64 of the CRR. *Instruments eligible for T2 correspond to subordinated debt instruments*.
For example, an asset management company A issues a fully paid-up subordinated bond with an initial maturity longer than five years.
- issue premium accounts related to the above instruments.

(*Article 66 of the CRR*). From which the following are deducted:
- the asset management company's holdings of its own T2 instruments[53]
- the asset management company's holdings of financial sector entities' T2 instruments[54].

The CRR provides calculation methods for the amounts to be deducted from each category of an asset management company's capital through holdings in financial sector entities. **The AMF considers that asset management companies can adopt a prudent and simplified approach consisting of directly deducting the book value of holdings rather than the amount determined in accordance with the CRR.**

The AMF considers that
- **An asset management company's CET1 capital should represent at least 75% of its Tier 1 capital[55].**
- **An asset management company's Tier 2 capital should not represent more than a third of its Tier 1 capital[56].**

6.2.3 Qualitative requirements concerning the investment of regulatory capital and surplus capital

Asset management companies' capital consists of the two following sub-categories:
- **regulatory capital**, whose value corresponds to the regulatory minimum requirement;
- **surplus capital**, corresponding to the value exceeding the regulatory minimum requirement.

For example, an asset management company A has capital of 500,000 euros and a regulatory minimum requirement of 300,000 euros. The difference between its capital and the regulatory minimum requirement is its surplus capital of 200,000 euros (500,000-300,000 euros).

a) Investing regulatory capital

[53] cf. Article 67 of the CRR
[54] cf. Articles 68-70 of the CRR
[55] AMF position derived from the requirements of Article 92 of the CRR
[56] AMF position derived from the requirements of Article 4 (1) (71) of the CRR

Paragraph 1 of Article 312-4 of the AMF General Regulation governs the investment of the regulatory capital of asset management companies subject to Title 1 of Book III of the AMF General Regulation: "*The company's capital, including additional capital, must be invested in liquid assets or assets that can easily be converted into cash in the short term and that do not include speculative positions*".

This provision is reiterated in paragraph I of Article 317-3 of the AMF General Regulation for asset management companies subject to Title 1bis of Book III of the AMF General Regulation. As additional capital within the meaning of the AIFM directive constitutes part of regulatory capital, it should also be invested in assets complying with the requirements of paragraph 1 of Article 317-3 of the AMF General Regulation.

Note that centralised cash management within a group and cash pooling[57] are prohibited in respect of regulatory capital.

b) Investing surplus capital

In accordance with paragraph II of Article 312-4 of the AMF General Regulation, "*When capital is more than 130% greater than the regulatory minimum requirement mentioned in Article 311-1A and Article 312-3, the portion exceeding this amount may be invested in assets that do not comply with the provisions of I, so long as these assets do not create a material risk to regulatory capital*".

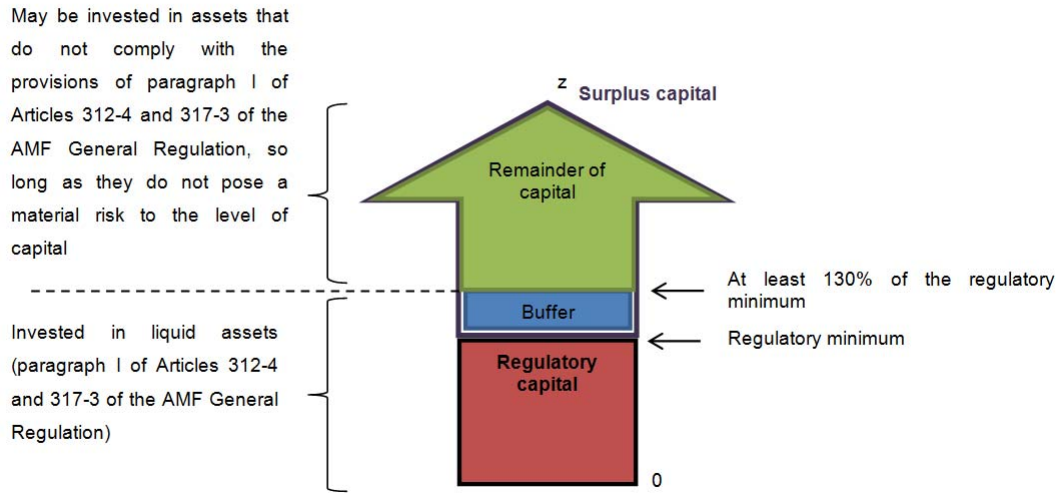
A similar provision is provided for in paragraph II of Article 317-3 of the AMF General Regulation for asset management companies authorised under the AIFM directive. It follows that an asset management company can invest part of its surplus capital in assets not considered liquid or easily convertible into cash or that amount to speculative positions, when all of the following conditions are met:

- in respect of its surplus capital, the asset management company first constitutes a capital buffer invested in assets that meet the requirements of paragraph I of Articles 312-4 and 317-3 of the AMF General Regulation. The buffer's value must be appropriate to the asset management company's business and the risks it bears, but must never be less than 30% of the value of its regulatory capital;
- the assets in which the balance of surplus capital is invested must not pose a material risk to the asset management company by reducing the value of its capital below the regulatory minimum requirement. Generally speaking, and in order to guarantee sound and prudent management, neither the assets of an asset management company nor any possible debts should create a material risk to its regulatory capital level.

Example (continued): the asset management company A wishes to incubate its new fund, which does not meet the requirements of paragraph I of Articles 312-4 and 317-3 of the AMF General Regulation (a retail private equity fund valued once a quarter, for example). It therefore ensures that it has a capital buffer of at least 90,000 euros (i.e. 30% of 300,000 euros) before investing all or part of the balance of its surplus capital of 110,000 euros in the new product. In order to determine the amount allocated to the incubation of its new vehicle, the asset management company A must ensure that this investment does not present a risk to its capital level. Its total capital can be broken down as follows:
- 300,000 euros in regulatory capital
- 200,000 euros in surplus capital, of which a buffer of 90,000 euros and a maximum 110,000 invested in its new fund.

[57] Cash pooling consists of aggregating the cash of a group's companies in a single bank account, typically that of a holding company. The other bank accounts in the pool are regularly credited or debited via this centralisation account.

Breakdown and investment of asset management companies' capital



The asset management company can also implement cash pooling for part of its surplus capital, subject to compliance with all of the following general principles:

- a capital buffer is constituted and invested in assets complying with paragraph I of Articles 312-4 and 317-3 of the AMF General Regulation. This portion of capital must enable the asset management company to avoid having to dip into its regulatory capital to meet any demands inherent in its business (an altered level of regulatory capital related to higher overheads, litigation, operating expenses, etc.). It is the asset management company's responsibility to define the buffer amount in the light of its estimated requirements. This amount should never be less than 30% of the asset management company's regulatory capital;
- immediate availability upon the asset management company's first request of an amount equivalent to sums placed in a cash pooling arrangement;
- precise identification of investment procedures, with express mention of exclusions; and
- the incorporation of a review of the procedures for investing capital made available to a cash pool in the internal control programme.

More generally, the programme of operations must review the asset management company's liquidity management policy in respect of both regulatory and surplus capital.