



**REAL ESTATE INVESTMENT COMPANIES, FORESTRY INVESTMENT COMPANIES AND FORESTRY GROUPS**

**Background regulations: Articles 422-189 to 422-249-5 of the AMF General Regulation**

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Unless otherwise specified, in this instruction, the term “investment management company” is used to refer to portfolio asset management companies that have been authorised in France<sup>1</sup> or investment management companies that have been authorised in a member state other than France.

In this instruction, the term “GFI” is used to refer to forestry groups (groupements forestiers d’investissement) as described in Article L. 331-4-1, point II of the French Forestry Code.

This Instruction is not applicable when the real estate investment company, forestry investment company or forestry group makes a public offering of its units, as mentioned in Article L. 411-2 1° of the Monetary and Financial Code.<sup>2</sup>

## 1. PUBLIC OFFERINGS OF SCPI, SEF AND GFI UNITS

### 1.1. Provisions applicable to all offerings

Real estate investment companies (sociétés civiles de placement immobilier, SCPI), forestry investment companies (sociétés d’épargne forestière, SEF) and GFIs may only sell their units to the public if an offering document approved by the French Financial Markets Authority (AMF), a key information document (as defined in Regulation (EU) 1286/2014 of 26 November 2014 “on key information documents for packaged retail and insurance-based investment products”, known as “KID PRIIPs”) and a subscription application have been drawn up.

Investment management companies that wish to carry out an offering or make significant changes to an offering document must complete and submit to the AMF the approval application form set out in Appendix V of the present instruction.

For the purposes of this paragraph, it is stated that any introduction of consideration of non-financial criteria that does not affect the risk and return profile of the SCPI *significantly* does not require a new approval of the offering

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<sup>1</sup> Whether they fall under Title I A or Title I C of Book III of the AMF General Regulation.

<sup>2</sup> Meaning an offering of units addressed exclusively to a restricted circle of investors acting on their own behalf or to qualified investors.

document. Whatever the case, the consideration or modification of these criteria requires the prior completion and submission of the form provided in Annex VI to this Instruction.

#### 1.1.1. Approved offering documents

A draft offering document, which should be set out as per the templates in Appendices I (for SCPIs), Ia (for SEFs) and Ib (for GFIs), must be submitted to the AMF.

The AMF departments will review the draft offering document and advise the investment management company which information should be added.

The AMF will notify the investment management company of its approval in a letter sent to the company's executive officers. Once the investment management company has been notified that approval has been granted, it must send the offering document to the AMF.

The approved offering document must be updated in the event of any significant changes being made to its content. The draft updated version must be submitted to the AMF for approval.

Management companies shall update the offering documents for SCPIs, SEFs or GFIs approved by the AMF as of 23 October 2019<sup>3</sup> by updating the legislative and regulatory references mentioned in the approval box pursuant to the update of this Instruction dated 5 March 2021 the next time they conduct an update of the offering documents, and at the latest by 1<sup>st</sup> September 2021.

#### 1.1.2. KID PRIIPs

The draft KID PRIIPs should be submitted to the AMF at the same time as the draft offering document.

Once the investment management company has been notified that approval has been granted, it must send the KID PRIIPs to the AMF.

#### 1.1.3. Subscription applications

Subscription applications must clearly state:

- the company name, followed by the acronym (where applicable);
- the company's legal status;
- the total unit capital;
- a brief summary of the company's corporate purpose;
- the amount of any capital increases and how these were achieved;
- the investor's name and address;
- the number of securities they have purchased;
- that the offering document and KID PRIIPs have been given to the investor on a "durable medium" (as defined in Article 314-5 of the AMF General Regulation);
- that a copy of the subscription application has been given to the investor on a "durable medium" (as defined in Article 314-5 of the AMF General Regulation).

## 1.2. Provisions applicable to initial offerings

#### 1.2.1. Submission of applications

The founders of a SCPI, SEF or GFI, or the executive offers of the investment management company responsible for managing it, must submit an application at the same time as the draft offering document.

- This application must include: the approval application form set out in Appendix V of the present instruction;

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<sup>3</sup> Date of entry into force or Order n° 2019-1067 of 21 October 2019 amending the provisions relating to public offerings of securities.

- the articles of incorporation or draft articles of incorporation of the SCPI, SEF or GFI;
- a description of the main features of the SCPI, SEF or GFI (e.g. how it is managed, its assets and clients); ;
- details of the company's founders;
- details of the proposed statutory auditors;
- the draft subscription application;
- confirmation that an application by an appraiser has been accepted, set out in accordance with paragraph 4 of the present instruction;
- the draft bank guarantee;
- the draft KID PRIIPs.

The backing offered by a bank to the SCPI, SEF or GFI should be set out on the bank's headed paper and must include the following details as a minimum:

- the amount the bank has agreed to guarantee;
- the date the contract was signed;
- the date on which the guarantee comes into effect (i.e. the date on which the public offering is opened);
- the expiry date of the guarantee;
- the financial conditions;
- the conditions in which the guarantee can be invoked.

#### 1.2.2. Granting of approval

AMF approval will only be granted once the following documents have been submitted:

- the final version of the offering document;
- the signed articles of incorporation;
- the minutes from the general meeting at which the company was set up, the supervisory board members and statutory auditor were appointed and the application from an appraiser was approved;
- a deposit certificate showing the founders' subscribed capital;
- a copy of the bank guarantee issued to the company;
- the final version of the subscription application;
- the K-Bis extract of the SCPI, SEF or GFI;
- a copy of the agreement entered into with the depositary appointed by the SCPI, SEF or GFI.

### 1.3. Provisions applicable to capital increases

In the event of a capital increase, the founders of a SCPI, SEF or GFI, or the executive offers of the investment management company responsible for managing it, must submit a written declaration at the same time as the draft offering document. This declaration must:

- confirm that there are no outstanding requests to withdraw or sell investments at a price that is equal to or lower than the subscription price;
- indicate the amount that the closed-end SCPI, SEF or GFI wishes to raise and how it intends to raise the amount stated;
- specify the difference between the unit subscription price for the SCPI, SEF or GFI and the replacement value for one unit.

### 1.4. Provisions applicable to SCPIs, SEFs and GFIs managed by authorised portfolio asset management companies in accordance with Directive 2011/61/EU – Marketing procedure

In cases where a SCPI, SEF or GFI is managed by a portfolio asset management company authorised in France, in accordance with Directive 2011/61/EU<sup>4</sup>, the latter must comply with the AMF General Regulation prior to marketing in France to professional (Article 421-1) and retail (Article 421-13) clients.

The maximum period of twenty working days stipulated in Article 421-2 of the AMF General Regulation, within which the AMF must advise a portfolio asset management company whether it can start marketing a SCPI, SEF or GFI to professional clients, also applies to applications to market to retail clients. If the marketing procedure is conducted at the same time as the authorisation request, this period starts from the date on which approval is granted, subject to the application being submitted in full. Provided that the application is complete and compliant with requirements, the notification that marketing may begin in France will be issued with the approval notification.

## 2. SALE OF UNITS ON THE ORDER REGISTERS OF SCPIS, SEFS AND GFIS

### 2.1. Orders

The registering, amending or cancelling of orders in a register is deemed valid only if such orders include the information stipulated in the template forms in Appendix II of the present instruction.

Only maximum-price purchase orders and minimum-price sale orders are admissible. Unlike sale orders, purchase orders can specify a validity period. The individual placing the order can stipulate that their order will only go through if all criteria are met in full.

### 2.2. Methods for sending orders

Orders can be sent to an investment management company or an intermediary.

Irrespective of how an order is sent, the individual placing the order must be able to prove that their order has been placed and confirm it has been received.

The investment management company should specify the methods it accepts for sending orders, from the following list, using the template forms in Appendix II:

- a letter requiring acknowledgement of receipt;
- a fax requiring acknowledgement of receipt;
- online, provided that there is a way for the recipient to confirm receipt;
- by telephone, with confirmation provided by the individual placing the order or their intermediary using one of the aforementioned methods.

Requests to cancel or change investments must also be submitted using one of the above methods.

### 2.3. Order registration

Orders are time-stamped before being recorded in the register. Orders are recorded in the register vertically, in decreasing purchase-price order, and increasing sale-price order, together with the cumulative quantities for each price level.

The validity period begins from the date on which an order is recorded in the register. In cases where an order's validity period comes to an end during a comparison period, that order is not included in the comparison process, but rather is deemed null and void on the closing date of the previous period.

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<sup>4</sup> Where the total value of the assets of the alternative investment funds (AIFs) under management, which is calculated in accordance with Article 2 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012, is above the thresholds set in Article R. 532-12-1 of the French Monetary and Financial Code, or where it is lower, but the portfolio asset management company has opted to apply Directive 2011/61/EU in full.

Changes made to a registered order will result in that order losing its ranking in the register if the individual placing the order:

- increases (for sale orders) or reduces (for purchase orders) the price limit;
- increases the quantity of units;
- changes the direction of their order.

## **2.4. Order hedging**

In accordance with Article 422-208 of the AMF General Regulation, investment management companies may, in the case of purchase orders, receive funds from an individual placing an order in a specific account opened in the name of the SCPI, SEF or GFI.

The amount required by the investment management company is indicated in the mandate. It cannot be greater than the price at which the registered order could be executed in full (including transaction fees).

Once an order has been executed, hedging can be used to settle the units acquired (including transaction fees).

## **3. INFORMATION THAT MUST BE PROVIDED TO INVESTORS AND THE AMF**

### **3.1. Information that must be provided to investors**

#### **3.1.1. Six-monthly SCPI, SEF and GFI newsletters.**

These six-monthly newsletters should be numbered and indicate the six-month period covered by the analysis, as well as the period for which the statements made in a newsletter are valid. They must include the date on which the AMF approved an offering document and its authorisation number, as well as the date on which the investment management company was authorised and its authorisation number.

If a general meeting is held during the six-month period under analysis, newsletters must also include details of any resolutions that were not approved.

Provisions applicable to SCPIs:

Six-monthly newsletters for SCPIs must include:

- a reminder of the conditions in which units can be bought, sold or withdrawn;
- any changes in capital since the beginning of the current financial year;
- an overview of orders executed since the beginning of the period under analysis (e.g. price, volume traded, date);
- the amount and date of interim dividends that have already been paid or are planned;
- the status of rental properties:
  - any acquisitions, sales or exchanges carried out during the six-month period under analysis;
  - average six-monthly occupancy rates (billed/billable rents);
  - collection of rents in accordance with the rules set out in the annual report;
  - vacant properties.

Provisions applicable to SEFs and GFIs:

Six-monthly newsletters for SEFs and GFIs must include:

- a reminder of the conditions in which units can be bought, sold or withdrawn;
- any changes in capital since the beginning of the current financial year;
- an overview of orders executed since the beginning of the period under analysis (e.g. price, volume traded, date);
- the status of forest properties:
  - any acquisitions, sales or exchanges carried out during the period under analysis;

- any work or felling carried out as part of basic ongoing management plans, normal forest management and other types of tasks;
- billing and monitoring of the collection of rents in accordance with the rules set out in the annual report.

### 3.1.2. Annual reports for SCPIs, SEFs and GFIs

The annual reports provided for in Articles 422-226 and 422-240<sup>5</sup> of the AMF General Regulation must contain the following information as a minimum, in addition to the information stipulated in Appendix IV:

- the management report;
- the summary documents set out in the chart of accounts and the certification issued by the statutory auditor;
- any significant changes<sup>6</sup> to the information specified in paragraph 3.1.3 of the present instruction that arise during the financial year covered by the report.

In cases where a SCPI, SEF or GFI is managed by an authorised investment management company, in accordance with Directive 2011/61/EU, annual reports must also include:

- the total payments made for the financial year by the investment management company to its staff, and the number of beneficiaries, broken down into fixed and variable payments;
- the aggregate payments made, broken down into those made to senior managers and other employees of the investment management company whose activities have a significant impact on the risk profile of a SCPI, SEF or GFI.

The accounting data contained in an annual report must be compiled in accordance with French accounting standards and the accounting rules set out in the offering document for a SCPI, SEF or GFI.

The report produced by the statutory auditor and, where applicable, any qualified opinions, must be reproduced in full in the annual report.

Provision applicable to SCPIs:

Annual reports for SCPIs must include the details specified in Article 422-227 of the AMF General Regulation.

Provision applicable to SEFs:

Annual reports for SEFs must include the details specified in Article 422-241 of the AMF General Regulation.

Provision applicable to GFIs:

Annual reports for GFIs must include the details specified in Article 422-249-3 of the AMF General Regulation.

Details that must be included in the annual report and are not included in the summary documents must feature in the management report.

The annual reports for several SCPIs, SEFs or GFIs can be drawn up in a single document, provided this does not affect the quality of the information provided.

As with the six-monthly newsletters, this document should also include details of the AMF authorisation.

### 3.1.3. Information to be provided to investors

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<sup>5</sup> Article 422-240 of the AMF General Regulation is applicable to GFIs, with reference to Article 422-249-1.

<sup>6</sup> As described in Article 106 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012.

In accordance with Article 421-34, point I of the AMF General Regulation, an investment management company that manages a SCPI, SEF or GFI must make the following information available to investors before they invest in that SCPI, SEF or GFI:

a) A description of the investment strategy and objectives of the SCPI, SEF or GFI, and of the types of assets in which the SCPI, SEF or GFI can invest.

In the case of SCPIs and SEFs, the investment management company must also describe the techniques they can use and all the associated risks, any restrictions on investment that may apply, the circumstances in which a SCPI or SEF can use leverage, the types and sources of leverage authorised and any associated risks, as well as any restrictions on the use of leverage.

In the case of SCPIs only, the investment management company must provide information on any ways in which they can reuse collateral or assets and on the maximum leverage the investment management company is authorised to use on behalf of a SCPI.

b) A description of the procedures that can be implemented by an investment management company that manages a SCPI, SEF or GFI to change its investment strategy or policy, or both.

c) A description of the main legal consequences of any contractual undertakings made for investment purposes, including information on legal jurisdiction, governing law and the existence of any legal instruments that provide for the recognition and execution of decisions made in France.

d) Details of the investment management company, depositary and statutory auditor for the SCPI, SEF or GFI, as well as any other service provider, together with a description of their obligations and investors' rights.

e) In cases where a SCPI, SEF or GFI is managed by an investment management company authorised in accordance with Directive 2011/61/EU, the latter must set out how it complies with the requirements listed in Article 317-2, point IV of the AMF General Regulation (or any equivalent provision transposing paragraph 7 of Article 9 of Directive 2011/61/EU, found in the law governing investment management companies).

f) A description of any management tasks that are delegated by the investment management company and any custodianship tasks that are delegated by the depositary, details of the delegatee and any conflict of interest that could arise as a result of such delegation.

g) A description of the process used to value SCPIs, SEFs and GFIs and the methodology for calculating the price used to assess the value of assets, including any methods used for assets that are difficult to value.

h) A description of the liquidity risk management procedures in place for a SCPI, SEF or GFI, including any redemption rights in both ordinary and extraordinary circumstances, and the existing methods in place with investors with regard to redemption<sup>7</sup>.

i) A description of any fees, charges and commission, together with the maximum amounts applicable, that are borne either directly or indirectly by investors.

j) A description of how the investment management company ensures fair treatment of investors and, in cases where an investor does benefit from preferential treatment or from the right to benefit from preferential treatment, a description of that preferential treatment, the type of investors who benefit from that preferential

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<sup>7</sup> "Existing methods in place with investors with regard to redemption" is understood to mean the creation, where applicable, of a redemption fund, as defined in Article 422-231 of the AMF General Regulation.



treatment, and, where applicable, details of their legal or economic ties with the SCPI, SEF or GFI, or with the investment management company.

k) Where applicable, the most recent annual report as described in paragraph 3.1.2 of the present instruction.

l) The procedure and conditions for issuing and buying back units or shares.

m) Where applicable, the most recent market value of the SCPI, SEF or GFI.

n) Where applicable, the past performance of the SCPI, SEF or GFI.<sup>8</sup>

o) A description of how and when the information required under Article 421-34, points IV and V of the AMF General Regulation is communicated.

With the exception of those set out in points k), m) and n), these details must be included in offering documents, templates for which are provided in Appendices I, Ia and Ib of the present instruction. When applying to market a fund, investment management companies must provide proof to the AMF that the information specified in points k), m) and n) is made available to investors before they invest in a SCPI, SEF or GFI.

SCPIs and SEFs that are already set up when this instruction is published must include the information detailed above in their offering documents when they are next updated. In the meantime, the aforementioned information should be made available to investors by any means possible, before they invest in a SCPI or SEF. SCPIs that fall under Article 33, point III of Order 2013-676 amending the legal framework for asset management are not required to update their offering documents.

Investment management companies that manage SCPIs, SEFs and GFIs must inform investors of any significant changes to this information.

### **3.2. Information to be provided to the AMF**

Investment management companies that manage SCPIs, SEFs or GFIs must provide the AMF with the following information:

#### **3.2.1. Documents provided to investors**

Invitations to general meetings for investors, including any draft resolutions, six-monthly newsletters and annual reports.

#### **3.2.2. The investment management company's annual financial statements and its management report**

#### **3.2.3. Statistical information**

Investment management companies must send the AMF statistics on the SCPIs, SEFs or GFIs they manage. In the case of SCPIs, investment management companies must provide the AMF with this information by inputting data on their six-monthly positions directly in the investment management company's dedicated area. They must take great care to ensure that the information provided is accurate and supplied within the timeframes specified.

Investment management companies must send this information to the AMF within the month following the end of the period in question and no later than the last day of that month.

#### **3.2.4. Market and replacement values**

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<sup>8</sup> Details of past performance given in annual reports must be made available to investors.

These values, which must be submitted for approval by investors, are sent to the AMF in accordance with the conditions set out in Articles 422-226 and 422-240 of the AMF General Regulation.

#### 4. APPRAISERS

Investment management companies must submit an application to the AMF with details of their proposed appraiser(s), as described in Articles 422-235 and 422-247 of the AMF General Regulation.

##### **4.1. This application must contain the following information: Appraiser details**

- name and address;
- if the appraiser is a legal entity, then investment management companies should provide the full name of the company, its legal status, a breakdown of its capital, details of its executive officers (in the form of a curriculum vitae detailing their experience in valuation and any other professional activities undertaken) and shareholders, its articles of incorporation (which must be certified, dated and signed) and a K-Bis extract dating from within the past three months;
- references relating to past work;
- a description of their administrative and commercial structure;
- the geographic area they cover;
- an organisation chart, the number of employees and their professional experience of valuation;
- the two most recent annual reports, turnover or fees received for valuation services.

In the case of SEFs and GFIs, investment management companies must also enclose a copy of the appraiser's/appraisers' registration in the annual list of forest appraisers with their application.

##### **4.2. Methods used to value the rental properties of SCPIs and the forest properties of SEFs and GFIs**

- A detailed description of the valuation methods chosen, explaining the concepts used and any due diligence carried out.
- Compliance with any codes of ethics and/or professional standards.

##### **4.3. Agreements between the appraiser(s) and SCPIs, SEFs or GFIs**

Agreements must be entered into by appraisers and SCPIs, SEFs or GFIs. These agreements set out the appraiser's/appraisers' brief and the terms of their pay.

The appraiser(s) must provide a letter to the AMF, in which they make undertakings relating to the conditions in which they will fulfil their brief and the nature of the services they provide. A template for this letter can be found in Appendix III.

##### **4.4. Annual report of the Appraiser(s)**

For SCPIs:

The appraiser must produce an annual report in which they value a SCPI's entire property portfolio. This report should be used by the investment management company executives to calculate the market value and replacement value of the SCPI managed by the company at the end of each financial year.

Each rental property should be valued at least once every 5 years. The appraiser should update the data between valuations.

In their annual report, the appraiser should record the properties that have been valued and those where the data has only been updated in two separate lists. The following information on each property should be included in these lists:

- the market value used by the appraiser (excluding all duties and taxes);
- the taxes and duties that would apply if a property were to be transferred;
- the total market value including duties and taxes.

The appraiser should provide any explanation that they deem useful in ensuring their report is understood. The report should contain details of the appraiser's brief and the concepts and methods they have used, together with an explanation of why these were chosen, where applicable.

It should also set out the benchmarks used and bases of the valuation.

The annual report must be clear and written in language that is simple, accurate and understandable to those who are not specialists in the field.

#### For SEFs:

In the case of SEFs, the appraiser(s) should produce a report in which they value the assets that make up a SEF's forest portfolio. This report should be used by the investment management company executives to calculate the market value and replacement value of the SEF managed by the company at the end of each financial year.

In their annual report, the appraiser should record in three separate lists the assets that have been valued, those where the data has only been updated and those that have been neither valued nor updated. The following information on each forest asset should be included in these lists:

- the market value used by the appraiser (excluding all duties and taxes);
- the taxes and duties that would apply if an asset were to be transferred;
- the total market value including duties and taxes.

The appraiser should provide any explanation that they deem useful in ensuring their report is understood. The report should contain details of the appraiser's brief and the concepts and methods they have used, together with an explanation of why these were chosen, where applicable.

It should also set out the benchmarks used and bases of the valuation.

The appraiser should check that the assets they have been charged with valuing have not been affected by an extraordinary event that would warrant a new valuation.

The annual report must be clear and written in language that is simple, accurate and understandable to those who are not specialists in the field.

It should include a glossary of terminology used as an appendix. All annual reports should be categorised in three separate lists: one relating to assets that have been valued in that financial year; a second relating to assets where data has been updated; and a third relating to assets that have been neither valued nor updated.

#### For GFIs:

In the case of GFIs, the appraiser(s) should produce a report in which they value the assets that make up a GFI's forest portfolio. This report should be used by the investment management company executives to calculate the market value and replacement value of the GFI managed by the company at the end of each financial year.

In their annual report, the appraiser should record the properties that have been valued and those where the data has only been updated in two separate lists. The following information on each forest asset should be included in these lists:

- the market value used by the appraiser (excluding all duties and taxes);
- the taxes and duties that would apply if a property were to be transferred;

- the total market value including duties and taxes.

The appraiser should provide any explanation that they deem useful in ensuring their report is understood. The report should contain details of the appraiser's brief and the concepts and methods they have used, together with an explanation of why these were chosen, where applicable. It should also set out the benchmarks used and bases of the valuation. The appraiser should check that the assets they have been charged with valuing have not been affected by an extraordinary event that would warrant a new valuation.

The annual report must be clear and written in language that is simple, accurate and understandable to those who are not specialists in the field.

## 5. MERGERS OF SCPIS, SEFS AND GFIS

A merger proposal and auditor's report on the conditions in which a proposed merger will take place must be submitted to the AMF no later than two weeks before the date of the general meeting at which the proposed merger will be voted on. The investment management company can also send the new draft offering document to the AMF before a merger takes place.

In cases where a merger does go ahead, the merger agreement should be sent to the AMF and the new offering document submitted to the AMF for approval.

## 6. FORESTRY INVESTMENT COMPANY AND FORESTRY GROUP MERGERS

SEFs can merge with a forestry group in the conditions provided for in Article L. 214-125 of the French Monetary and Financial Code. For this type of merger, the investment management company that manages the SEF must liaise with the relevant AMF departments.