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MIFID II
GUIDE FOR FINANCIAL
INVESTMENT ADVISORS



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PREAMBLE

Financial investment advisors (FIAs), which are governed by the regime introduced in the Financial Security Act of 1 August 2003, **play a role in distributing financial instruments in France.**

FIAs may:

- provide financial investment advice¹, including the service of investment advice;
- receive and transmit orders on behalf of their clients for units or shares in collective investment undertakings (CIUs) they had previously recommended to said clients.

Under Directive 2014/65/EU (“MiFID II”)², FIAs will be subject to some of the same requirements as investment firms from 3 January 2018.

Through the example of different themes that will affect FIAs’ activities in the future, this guide presents the work that has been done to establish an “analogous” regime for FIAs in France. The guiding principle behind this regime is to find a balance between protecting investors and preserving the FIAs’ special status.

This guide, which is not exhaustive, focuses on the main topics of MiFID II that affect FIAs. It therefore answers a number of questions that have arisen for FIAs. The content of this document is also liable to change and be updated depending on the final transposition regulations and laws. The AMF plans to publish an expanded edition of this guide once the provisions of the AMF General Regulation have been issued.

For methodological reasons, the sections are generally structured as follows: the first, “*MiFID II provisions*” provides an overview of the requirements that will apply to investment firms after this directive takes effect. The second, “*Rules currently applicable to FIAs*”, outlines current FIA regulations. The last section, “*Analogous requirements for FIAs*”, describes the basic principles of the analogous regime that will apply to FIAs on 3 January 2018 and that will be clarified with the publication of amendments to the AMF General Regulation.

¹ Under Article L. 541-1 of the Monetary and Financial Code, this activity consists of the investment advice referred to in paragraph 5 of Article L. 321-1 of that code, the advice relating to the provision of investment services referred to in Article L. 321-1, and the advice relating to execution of the transactions in miscellaneous property described in Article L. 550-1. Under sub-paragraph II of that same article, FIAs may also: “*receive orders for the purpose of their transmission on behalf of clients to whom they have provided advisory services, under the conditions and within the limits determined in the General Regulation of the Autorité des Marchés Financiers, and may engage in other asset management-related consultancy activities*”.

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, amended by Directive (EU) 2016/1034 of 23 June 2016.

Section 1 – Impacts of MiFID I and MiFID II on FIAs

1. UNDER MIFID I: AN EXEMPTION REGIME

MiFID I³, transposed into French law in 2007, aimed in particular to regulate investment services providers and established investment advice as an investment service.

The provision of investment services, and therefore of investment advice, thus requires an authorisation and full compliance with this directive and the related texts.

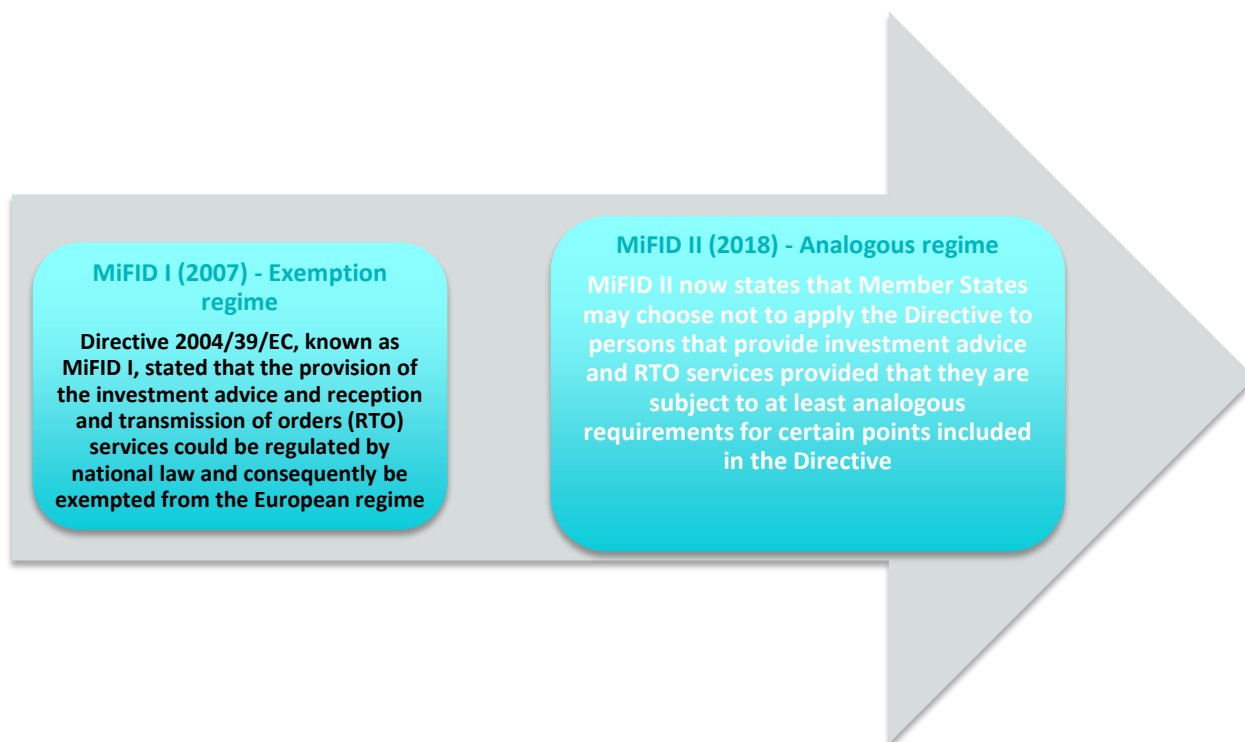
However, Article 3 of MiFID I allows Member States not to apply the Directive to any persons that provide the services of investment advice and reception and transmission of orders (RTO) on behalf of third parties, provided in particular that the activities of those persons are authorised and regulated at national level. This is the context in which the French FIA regime was able to be maintained, and it was agreed to extend certain MiFID I rules to FIAs (for example, rules on benefits and remuneration, as well as the requirement that information be clear, accurate and not misleading).

2. UNDER MIFID II: AN EXEMPTION REGIME BUT WITH RULES ANALOGOUS TO THOSE IN THE DIRECTIVE

The aim of MiFID II is to revise MiFID I. European lawmakers, to further the objective of investor protection by improving disclosure and preventing conflicts of interest, have strengthened the requirements applicable to firms that provide investment services. The measures arising from MiFID II will enter into force on 3 January 2018.

Article 3 of MiFID II still allows Member States not to apply all of its measures to any persons who provide only investment advice and RTO services. However, while the only major condition MiFID I placed on this optional exemption regime was that the activities of those persons be regulated at national level, MiFID II now requires that such persons be authorised and that they be subject under national law to certain requirements analogous to those applicable to the investment firms listed in the Directive in order to remain eligible for the exemption regime.

³ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.



3. DETAILS ON THE ANALOGOUS NATURE OF THE MEASURES BEING ESTABLISHED UNDER THE FIA REGIME

The concept of analogous regime does not necessarily mean that the analogous measures must be **identical** to those required by MiFID II.

The analogous regime to be established concerns both the level 1 MiFID II text and the level 2 texts (the delegated directive⁴ and the delegated regulation⁵).

The analogous measures will cover the following topics:

- Authorisation and monitoring conditions and measures;
- Conduct of business rules;
- Organisational requirements.

With regard to the national law impact, while the optional exemption regime is much more restrictive in MiFID II than MiFID I, this should be put into perspective in France's case. The French regime applicable to FIAs had been established on the basis of principles applicable in France to investment services providers (ISPs) under MiFID I. FIAs must therefore comply with organisational rules (conflicts of interest, archiving, etc.), even though, in view of the FIA structures, they are not as restrictive as for ISPs. Moreover, FIAs are subject to similar rules as ISPs on verifying the suitability of the advice provided to the client and on the benefits and remuneration regime.

⁴ Commission Delegated Directive (EU) No 2017/593 of 7 April 2016 (the MiFID II Delegated Directive).

⁵ Commission Delegated Regulation (EU) No 2017/565 of 25 April 2016 (the MiFID II Delegated Regulation).

However, changes will have to be made to the FIA regime to comply with MiFID II requirements.

4. THE CURRENT STATUS

Efforts are underway to develop the analogous regime: the ordinance of 23 June 2016 introduced analogous requirements for FIAs into national law in Articles L. 541-4 *et seq.* of the Monetary and Financial Code as applicable at 3 January 2018.

At a later date, Articles 325-1 *et seq.* of the AMF General Regulation will be amended to clarify the text of the Monetary and Financial Code based on the supplementary provisions of the MiFID II Delegated Regulation and Delegated Directive. A draft amendment to the AMF General Regulation will be put out for consultation in the coming weeks.

Lastly, the codes of conduct of FIA professional associations will be updated to account for changes in the analogous regime and will then be approved by the AMF.

5. WHAT IS CHANGING

Under the current system	AFTER MiFID II	Impact
The existing national regime was sufficient to meet the exemption regime requirement under MiFID I	To be eligible for the exemption: the existing national regime must be strengthened to comply with MiFID II requirements for: <ul style="list-style-type: none"> ➤ Authorisation and monitoring conditions and measures ➤ Conduct of business rules ➤ Organisational requirements 	Varies according to analogous requirements (detailed below)

Section 2 – Reinforced FIA monitoring and authorisation procedure

SUMMARY

MiFID II imposes requirements on the authorisation procedure and on the monitoring of investment firms. These are among the analogous requirements for FIAs. Under French law, the analogous regime requires that professional associations review an FIA's programme of operations when it applies for membership by evaluating the conditions under which the FIA expects to conduct its business. It also requires that associations monitor their members.

1. MEMBERSHIP PROCEDURE

1.1. MIFID II PROVISIONS

MiFID II sets out the requirements for investment firm authorisation. Article 7(2) specifies that *“The investment firm shall provide all information, including a programme of operations setting out, inter alia, the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under this Chapter”*.

It also states in Article 10 that: *“The competent authorities shall not authorise the performance of investment activities by an investment firm until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings⁶ and the amounts of those holdings”*.

1.2. RULES CURRENTLY APPLICABLE TO FIAs

Currently, FIAs must join a professional association (Article L. 541-4 of the Monetary and Financial Code) before they are registered with ORIAS⁷ (Article L. 541-1-1 of the Monetary and Financial Code).

When they apply to join a professional association, that association must verify certain information (the FIAs' expertise, planned activities, etc.).

In practice, FIA associations already currently require that FIAs provide an “activities factsheet” when they join. However, no law or regulation had previously set out a specific framework.

⁶ Obligation under Article 10 of MiFID II. Qualifying holding means a direct or indirect holding which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the FIA in which that holding subsists.

⁷ Organisation responsible for registering insurance intermediaries

1.3. ANALOGOUS REQUIREMENTS FOR FIAs

FIAs will continue to provide an “activities factsheet”, now called a “programme of operations”: Article L. 541-4 II sub-paragraph 1 of the Monetary and Financial Code (applicable from 3 January 2018) has adopted the semantics of MiFID II and now states that: *“in advance of the financial investment advisor’s membership, the association shall verify that it has a programme of operations”*.

Accordingly, under Article L. 541-4 II sub-paragraph 3 of the Monetary and Financial Code (applicable from 3 January 2018), upon joining, the FIA will have to present a programme of operations in which it specifies the following:

- the type of business envisaged and its organisational structure;
- where the FIA is a corporate entity, the identities of the shareholders, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.

However, although the term “programme of operations” applies to both FIAs and ISPs, FIAs are not expected to provide as detailed a document as that submitted by ISPs. The main change relates to the description of the ownership structure.

2. STRENGTHENED FIA MONITORING

2.1. MiFID II PROVISIONS

Article 8 of MiFID II sets out the situations in which the competent authority may withdraw its authorisation from any investment firm, including where:

- the authorisation is not used within 12 months;
- the authorisation is expressly renounced;
- the authorisation was obtained by making false statements or by any other irregular means;
- the firm no longer meets the conditions under which the authorisation was granted.

Under Article 21 of MiFID II, investment firms are also subject to regular review of the conditions for initial authorisation.

2.2. RULES CURRENTLY APPLICABLE TO FIAs

Article 325-17 of the AMF General Regulation currently states that: *“The association shall establish written admission and disciplinary procedures for its members who are financial investment advisors”*.

The second paragraph of this same article specifies that: *“The association shall also establish written procedures to monitor compliance by the members referred to in the first paragraph with applicable laws, regulations and ethical rules”*.

Professional associations are therefore not currently required to establish procedures for the situations included in Article 8 of MiFID II, with the exception of disciplinary procedures.

FIAs may also be monitored and sanctioned by the AMF, and this is not affected by the entry into force of the regime analogous to MiFID II.

2.3. ANALOGOUS REQUIREMENTS FOR FIAs

To take these situations into account, Article L. 541-4 III sub-paragraph 3 of the Monetary and Financial Code (in the version applicable on 3 January 2018) states: “[Associations] shall establish written procedures under which they decide on the membership, withdrawal of membership, monitoring and discipline of their members who are financial investment advisors”. The professional associations’ procedures will therefore have to be updated.

The text sets out the terms and conditions under which and the situations in which membership may be withdrawn. A withdrawal may be decided on by the association at the FIA’s request or automatically by the association⁸, in particular if the FIA no longer meets the conditions or commitments to which its membership was subject, if it has not begun its operations within 12 months of membership, if it has not performed its activity for at least six months or if it has obtained membership by making false statements or by any other irregular means. In practice, this change should have a limited impact, as professional associations merely have the option of withdrawing membership in the above situations and are not required to do so.

The purpose of the associations has also been amended to include the “monitoring” of their members. This is more a matter of setting out in law what associations are already doing⁹.

3. WHAT IS CHANGING

Under the current system	AFTER MiFID II	Impact
<p>FIA membership in a professional organisation and registration with ORIAS</p> <p>Provision of an activity factsheet</p> <p>Professional associations establish rules in accordance with Article 325-17 of the AMF General Regulation</p>	<p>The activity factsheet is enshrined in law and becomes a “programme of operations” with clearly defined content</p> <p>FIA associations set the rules for withdrawing membership, with the exception of disciplinary procedures</p> <p>The law establishes the member “monitoring” dimension with respect to the associations’ purpose</p>	<p>Low</p> <p>The current FIA regime already complies with many of the measures required under MiFID II</p>

⁸ As Article 8 of MiFID II states that the “competent authority may withdraw the authorisation issued to an investment firm” in the situations described above. The national legislature considered that, in such cases, the professional association could (see 2.1.), under the analogous regime, automatically withdraw the FIA’s membership.

⁹ Under Article 541-4 of the Monetary and Financial Code: “Any financial investment advisor must belong to an association that is responsible for the monitoring of the individual professional activity, the collective representation, and the defence of the rights and interests of its members”.

Section 3 – Rules of governance for FIAs and prevention of conflicts of interest

SUMMARY

MiFID II supplements investment firms' rules of governance and imposes new requirements on the investment firm's management body and its human and financial resources, as well as on conflicts of interest. The ordinance of 23 June 2016, applicable from 3 January 2018, provides for enhanced conflict of interest management arrangements for FIAs in the Monetary and Financial Code. The AMF General Regulation is also expected to supplement the measures applicable to FIA governance.

1. STRENGTHENED FIA ORGANISATION

1.1. MIFID II PROVISIONS

MiFID II states that: *“Competent authorities granting the authorisation in accordance with Article 5 shall ensure that investment firms and their management bodies comply with Article 88 and Article 91 of Directive 2013/36/EU (CRD IV)”*. MiFID II therefore refers to the provisions of CRD IV for the definition of the rules on the organisation of investment firms.

As a reminder:

- Article 88 of CRD IV states, first, that the management body shall define, oversee and is accountable for the implementation of the governance arrangements¹⁰ that ensure effective and prudent management of an institution, including the segregation of duties in the organisation and the prevention of conflicts of interest; this same article specifies that institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a nomination committee¹¹.

¹⁰ Points (a) to (e) of Article 88(1) of CRD IV list the criteria that the governance arrangements must meet, in particular: (a) the management body's exercise of overall responsibility for the institution; (b) oversight of the integrity of the accounting systems; (c) oversight of the process of disclosure and communications; (d) responsibility for providing effective oversight of senior management; and (e) the inability, in principle, for the chairman of the management body in its supervisory function to exercise simultaneously the functions of a chief executive officer within the same institution.

¹¹ Under Article 88(2) of CRD IV, this committee shall, among others (a) identify and recommend candidates to fill management body vacancies; (b) assess the structure, size and performance of the management body; (c) periodically assess the knowledge, skills and experience of members of the management body; and (d) periodically review the policy of the management body for selection and appointment of senior management.

- Article 91 sets out the requirements applicable to the management body, both those applicable to individual members (sufficiently good reputation, knowledge, experience and skills; sufficient time to perform their functions in the institution; limitation on members' holding of multiple directorships, where applicable) and those applicable collectively to the body (adequate collective skills, knowledge and experience to be able to understand the institution's activities).

Investment firms will therefore be subject to a number of organisational rules from 3 January 2018. Under national law, the rules outlined above must be covered by analogous measures for FIAs.

1.2. RULES CURRENTLY APPLICABLE TO FIAs

FIAs are presently already subject to certain entrance rules. In particular, Article 541-2 of the Monetary and Financial Code states that *“Individuals who are financial investment advisors, and individuals empowered to manage or administer legal entities authorised to act as financial investment advisors, must meet conditions relating to age and respectability determined by decree, as well as the conditions of professional competence set forth in the General Regulation of the Autorité des Marchés Financiers”*.

Thus, according to Article 325-1 of the AMF General Regulation, a financial investment advisor shall demonstrate that it has one of the following before commencing business:

- A national degree demonstrating three years of higher education study in law, economics or management, or a credential or diploma of the same level suitable for the carrying out of the operations mentioned in I of Article L. 541-1 of the Monetary and Financial Code;
- Relevant professional training in carrying out the transactions mentioned in I of Article L. 541-1 of the Monetary and Financial Code;
- At least two years' professional experience in positions related to the conduct of transactions in the categories specified in I of Article L. 541-1 of the Monetary and Financial Code, gained during the five years before commencing business.

In short, FIAs are currently subject to specific professional entrance requirements; however, MiFID II adds certain governance requirements.

1.3. ANALOGOUS REQUIREMENTS FOR FIAs

The professional entrance requirements for FIAs set out in Article L. 541-2 of the Monetary and Financial Code remain unchanged.

However, FIAs could be subject to certain governance rules. These analogous requirements may be adjusted to account for their specific nature and may not impose disproportionate governance requirements on FIAs.

The relevant legislative provisions will therefore have to be specified in the AMF General Regulation, which could provide for the following principles:

- The FIA shall have an organisation and written procedures appropriate to its size and organisation and to the nature, importance and complexity of its business.
- Individuals empowered to manage or administer legal entity FIAs shall commit sufficient time to perform their functions.
- Individuals who are FIAs, individuals empowered to manage or administer legal entities authorised to act as financial investment advisors, and individuals employed to engage in

financial investment advice-related business shall commit sufficient time to update their knowledge.

2. CLARIFICATION OF THE RULES ON PREVENTING AND MANAGING CONFLICTS OF INTEREST

2.1. MiFID II PROVISIONS

Article 16(3) of MiFID II stipulates that *“An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 23 from adversely affecting the interests of its clients”*.

As such, Article 23(1) of MiFID II sets out two types of conflicts of interest in connection with investment firm business, including those caused by the receipt of inducements from third parties or by the investment firm’s own remuneration and other incentive structures:

- between the investment firm, its staff or any group entity and a client; or
- between clients of the investment firm (scenario of a conflict of interest between two of the investment firm’s clients).

Furthermore, Article 23(2) of the same directive states that: *“Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to prevent conflicts of interest from adversely affecting the interest of its client are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose to the client the general nature and/or sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf”*.

The third paragraph of that article states that this disclosure shall be made to the client in a durable medium and include sufficient detail to enable the client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

The MiFID II Delegated Regulation clarifies these provisions: Article 33 provides a non-exhaustive list of possible conflicts of interest:

- “(a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;*
- (b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client’s interest in that outcome;*
- (c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;*
- (d) the firm or that person carries on the same business as the client;*
- (e) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monetary or non-monetary benefits or services”*.

Article 34 of this same Delegated Regulation details the items of the conflicts of interest policy implemented¹². Paragraph 3 of the same article identifies the minimum criteria that must be included in this conflicts of interest policy¹³.

2.2. RULES CURRENTLY APPLICABLE TO FIAS

Sub-paragraph 1 of Article L. 541-8-1 of the Monetary and Financial Code states that FIAs must: “Act honestly and fairly in the best interests of their clients”.

Article 325-8 of the AMF General Regulation stipulates that FIAs shall have resources and written procedures to enable them to prevent, manage and deal with any conflicts of interest.

While this provision states that FIAs shall have certain conflict of interest procedures, their content is not defined and the text does not specify how conflicts of interest should be managed and dealt with (transparency rule, for example).

¹² Article 34(2) of the MiFID II Delegated Regulation: “The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

(a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed and measures to be adopted in order to prevent or manage such conflicts”.

¹³ Article 34(3) of the MiFID II Delegated Regulation states that the conflicts of interest policy must include at least the following items: (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

2.3. ANALOGOUS REQUIREMENTS FOR FIAs

Under national law, all of the conflict of interest rules in MiFID II have been incorporated into the analogous regime and included in the FIA organisational rules in Article L. 541-8(4) of the Monetary and Financial Code (applicable from 3 January 2018).

The analogous regime therefore specifies that FIAs:

“(4) Shall take all appropriate measures to identify and prevent or manage conflicts of interest. Said conflicts of interest are those which arise, on the one hand, between the financial investment advisors themselves, the individuals and legal entities placed under their authority or acting on their behalf or any other individual or legal entity directly or indirectly linked to them through a controlling relationship and, on the other hand, their clients, or between two clients, when carrying out the activities referred to in Article L. 541-1-1 or any combination of said activities, including those caused by the receipt of benefits from third parties or by the financial investment advisor’s own remuneration and other incentive structures.

Where said measures do not suffice to ensure, with a reasonable degree of certainty, that the risk of undermining the clients’ interests will be avoided, the financial investment advisor shall clearly inform the clients of the general nature or the source of said conflicts of interest and of the measures taken to mitigate those risks before acting on their behalf”.

Therefore, as a last resort, FIAs must inform their clients of the existence of a conflict of interest on a durable medium.

The MiFID II Delegated Regulation specifies these arrangements, in particular:

- The content of the written conflicts of interest policy;
- The creation of a list of possible conflicts of interest.

The AMF General Regulation could clarify these provisions under the analogous regime.

3. WHAT IS CHANGING

Under the current system	AFTER MiFID II	Impact
Existence of rules for persons managing FIAs (good repute, skills)	Stronger FIA governance rules (time committed to performing functions, etc.)	High Some clarifications provided but the principles already exist
Existence of a conflicts of interest rule (AMF GR)	Stronger conflicts of interest rules (transparency, details on the content of the conflicts of interest policy, etc.)	

Section 4 – Independent investment advice

SUMMARY

MiFID II introduces, within the service of investment advice, a distinction between independent advice and non-independent advice and requires investment firms that provide such advice to specify to clients whether or not they are doing so on an independent basis. If they are providing the advice on an independent basis, firms must fulfil several criteria regarding how they assess the financial instruments they are likely to recommend and how they charge for their services.

These provisions are among the analogous requirements that will apply to FIAs.

1. INDEPENDENT INVESTMENT ADVICE IN MiFID II

Article 24(7) of MiFID II states that an investment firm that provides investment advice on an independent basis must fulfil certain criteria regarding the diversity of the financial instruments assessed and the framework for how it charges for its advice.

1.1. QUANTITY AND DIVERSITY OF PRODUCTS EVALUATED BY THE INDEPENDENT ADVISOR

According to Article 24(7) of MiFID II, the provider of the independent investment advice service must “*assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers [...] and must not be limited to*” those issued by the group.

The MiFID II Delegated Regulation contains the obligation to explain to clients, clearly and concisely, how the service fulfils the independence criteria and to provide details of the factors taken into consideration when making the recommendation (risks, costs, complexity, etc.)¹⁴.

The Regulation also states that the number and variety of financial instruments considered should be proportionate to the scope of investment advice services offered.¹⁵ As such, if the investment advice pertains to a niche market with a limited number of products, the advisor should be able to act on an independent basis without assessing a large number of instruments, insofar as the scope of the products in question is representative of the market being approached. However, in such a case, the advisor must:

- market itself in a way that is intended only to attract clients with a preference for the specific financial instruments it recommends;
- ensure that its clients request advice only about this type of instrument;
- ensure that these instruments are suitable for the clients.

¹⁴ Article 52 of the MiFID II Delegated Regulation.

¹⁵ Article 53 of the MiFID II Delegated Regulation.

It is not necessary for the independent advisor to analyse all the financial instruments of all the issuers available on the market before making a recommendation¹⁶. However, the investment firm must never limit its assessment to instruments issued by itself or by an entity to which it is closely linked, where these are equity, economic or contractual links that are strong enough to put at risk the independent basis of the advice provided. Additionally, Article 53 of the MiFID II Delegated Regulation states that the quantity of instruments issued by the investment firm itself or by entities closely linked to this firm must remain proportionate to the total amount of instruments considered. For each type of instrument considered, the advisor must also separate those issued or produced by an entity with no links to the advisor.

1.2. BAN ON RETROCESSION FEES AND OTHER MONETARY AND NON-MONETARY BENEFITS

Under Article 24(7) of MiFID II, when providing advice on an independent basis, investment firms are not permitted to retain any monetary or non-monetary benefit paid by a third party. If they accept such a benefit, they must transfer it to their client and will be able to bill for advice fees as payment for the service they have provided.

Article 12 of the MiFID II Delegated Directive specifies that all benefits received must be returned in full and as soon as possible to the client after receipt. Moreover, the advisor must implement a policy to ensure that such payment has been made and inform the client about fees, commissions or any monetary benefits transferred to it, by way of periodic reporting statements where appropriate.

On the other hand, when providing advice on a non-independent basis, investment firms will still be allowed to accept retrocession fees and any other kind of monetary or non-monetary benefit (subject to certain conditions relating to the benefits and remuneration regime).

By way of exemption, independent advisors are permitted to retain minor non-monetary benefits provided they are: (i) capable of enhancing the quality of service provided to a client; (ii) sufficiently low to ensure that the advisor acts in the client's best interest; and (iii) clearly disclosed to the client¹⁷.

2. CURRENT INVESTMENT ADVICE RULES

An investment advisory service is deemed to be the act of providing personal recommendations to a third party, either at the latter's request or at the initiative of the firm providing the advice, on one or more transactions relating to financial instruments¹⁸.

As such, it should be noted that the concept of investment advice provided on an independent basis is a new aspect introduced by MiFID II, in particular with regard to the ban on retrocession fees. In contrast, for investment advice provided on a non-independent basis, the AMF General Regulation already includes provisions on FIA remuneration, the benefits and remuneration regime. The AMF General Regulation thus¹⁹ states that:

- FIAs must inform their clients of the terms and conditions of remuneration for the provision of the service;

¹⁶ Recital 73 of MiFID II.

¹⁷ Article 24(7) of MiFID II.

¹⁸ Article D. 321-1(5) of the Monetary and Financial Code.

¹⁹ AMF General Regulation, Articles 325-4(4) and 325-6.

- their remuneration must enhance the quality of the advisory service;
- receipt of the remuneration must not impair their duty to act in the best interests of the client.

3. INDEPENDENT INVESTMENT ADVICE IN THE ANALOGOUS REGIME

Independent investment advice is introduced into French law in the FIA analogous regime in Article L. 541-8-1(7) of the Monetary and Financial Code (applicable from 3 January 2018) characterised by:

- the criterion for the number and variety of financial instruments assessed;
- the ban on retrocession fees and other monetary and non-monetary benefits for financial investment advisors that provide independent advice.

In practice, FIAs that provide investment advice on an independent basis will no longer be able to be limited to assessing “group products”, issued or provided by entities with which they have legal or economic links, whether this involves a group of companies or contractual links.

FIAs that provide investment advice on an independent basis will also have to adjust the terms and conditions of their remuneration due to the ban on retrocession fees and other monetary and non-monetary benefits paid by a third party as part of the provision of the service.

Specifically, FIAs that provide investment advice on an independent basis will have to:

- be compensated by fees paid by their clients and not through retrocession fees paid by the manufacturers; or
- return to their clients the retrocession fees received from third parties, where applicable.

Conversely, FIAs that do not provide investment advice on an independent basis will still be able to receive retrocession fees, subject to compliance with the rules on benefits and remuneration that require client disclosure, enhanced service, and compliance with the duty to act in the best interests of the client. As is the case for ISPs, the benefits and remuneration regime will have to be maintained in the AMF General Regulation, subject to adjustments to clarify the enhancement of service criteria. The criteria in the Delegated Directive could be incorporated (for example, the requirement to provide long-term advice in the case of payment through retrocession fees over time; this already exists in AMF policy (AMF Position – Recommendation DOC-2013-10)).

As of 3 January 2018, two remuneration regimes will therefore apply to FIAs depending on whether or not they provide independent advice. FIAs that provide independent advice will be subject to the ban on retaining retrocession fees while FIAs that provide non-independent advice will be covered by the benefits and remuneration regime. This requires, in particular, that they show they have enhanced the service provided to the client if they retain the retrocession fees.

Exceptionally, in accordance with MiFID II, the French analogous regime will permit FIAs that provide advice on an independent basis to continue to receive minor non-monetary benefits. Generally, minor non-monetary benefits under Article 12(3) of the MiFID II Delegated Directive must be reasonable and proportionate, of such a scale that they are unlikely to influence the investment firm’s behaviour in any way that is detrimental to the interests of the relevant client, and disclosed to the client (at least in a generic way).

Receptions, ceremonies and gifts accepted by FIAs should not be excessive (e.g. a seminar in an exotic location, an electronic device, etc.). However, FIAs would be permitted to accept invitations to seminars and meetings involving a meal or drinks where the aim is to present a financial instrument or investment service in an ordinary environment. More generally, the benefit must not be sufficient as to be likely to influence the FIA's behaviour.

4. WHAT IS CHANGING

Under the current system	AFTER MiFID II	Impact
<p>Duty to inform clients about the terms and conditions of the FIA's remuneration</p> <p>Benefits and remuneration regime</p>	<p>Introduction of the concept of independent investment advice:</p> <p>Requirement regarding the quantity and diversity of products evaluated by the independent FIA</p> <p>Rules governing the terms and conditions of FIA remuneration: advisors providing investment advice on an independent basis will no longer be able to keep fees from product issuers. The remuneration of advisors providing investment advice on an independent basis should consist of fees paid by their clients</p> <p>Disclosure to the client of the independent/non-independent nature of the advice (see Section 6)</p>	<p>High for FIAs that provide investment advice on an independent basis</p>

Section 5 – Governance of financial instruments

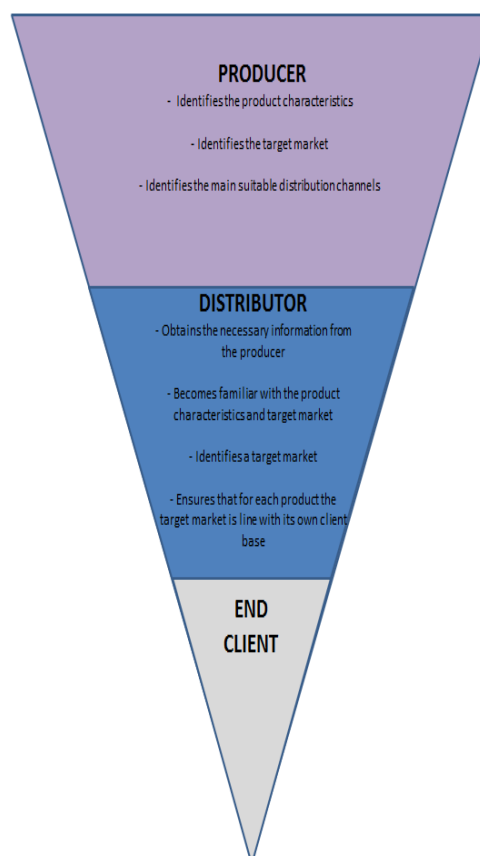
SUMMARY

MiFID II contains new obligations relating to the governance of financial instruments. The aim is to provide a clearer definition of the respective responsibilities of manufacturers and distributors by establishing a link between the two main constituents of the distribution chain.

MiFID II therefore establishes a two-part regime: manufacturer rules and distributor rules.

If a MiFID entity creates products, it must have a system for validating products, identifying a target market, and providing distributors with all pertinent information about the financial instruments in question (“manufacturer rules”).

Distributor rules apply to FIAs under the analogous regime, if they provide the service of investment advice.



IDENTIFYING THE TARGET MARKET

Article 16(3) of MiFID II states that distributors must have suitable systems for obtaining pertinent information about the financial instruments (including in cases where the manufacturer is not subject to MiFID rules), understanding the characteristics of said instruments and assessing the compatibility of each financial instrument with their clients’ needs, particularly with regard to the target market they identify having taken account, where applicable, of the target market identified by the manufacturer (“distributor rules”).

The information obtained about the product must be compared with information about the distributor's clients in order to define the target market and distribution strategy²⁰.

Article 10 of the MiFID II Delegated Directive stipulates that the distributor must define not only a target market (based on any target market defined by the manufacturer²¹), but also a 'negative' target market, i.e.

²⁰ Article 10(2) of the MiFID II Delegated Directive.

²¹ The manufacturer shall determine the target market based on the following criteria: the manufacturer’s theoretical knowledge of and experience with the financial instrument or similar financial instruments, the financial markets and the needs, characteristics and objectives of potential end clients.

the group(s) of customers whose needs, characteristics and objectives are not compatible with the product or service in question²². As such, the MiFID II Delegated Directive specifies:

- The information required from the manufacturer, whether or not it is subject to MiFID: this information must provide the distributor with sufficient understanding and knowledge of the products it intends to recommend or sell so that they are distributed in accordance with the needs, characteristics and objectives of the defined target market.
- The regular review of the proposed or recommended financial instruments and the services provided, taking into account any event likely to have a major impact on the potential risk for the target market.
- The expertise of the marketing workforce (they must possess the necessary expertise to understand the characteristics and risks of the products, as well as the needs, characteristics and objectives of the defined target market) and the management body (checking the governance process).
- The provision to the manufacturer of sales information.
- The situation whereby several investment firms work together to distribute a product or service (distribution chains): the intermediary companies must ensure that information about the product is transmitted from the manufacturer to the end distributor and that information about product sales is reported back from the end distributor to the manufacturer.

If the manufacturer is not subject to MiFID II (unregulated issuers or asset management companies), the distributor alone is responsible for determining the target market and taking all reasonable steps to obtain from the manufacturer adequate and reliable information enabling it to distribute the products in accordance with the needs, characteristics and objectives of the target market²³.

On 2 June 2017, ESMA published the final report on product governance guidelines²⁴. These guidelines mainly address the target market assessment which must consider five criteria: (a) type of client, (b) knowledge and experience, (c) financial situation with a focus on the ability to bear losses, (d) risk tolerance and (e) clients' objectives and needs. They also note the application of the proportionality principle in implementing distributor obligations, based on the nature of the financial instruments and the type of investment services. The guidelines also state that the governance arrangements should not hinder diversification of the client's portfolio and should allow distributors to recommend products outside their target market, provided they can demonstrate the suitability of these products.

5. RULES CURRENTLY APPLICABLE TO FIAs

FIAs currently must act honestly and fairly in the best interests of their clients, which involves the suitable distribution of financial instruments consistent with clients' needs and characteristics, according to Article L. 541-8-1(1) of the Monetary and Financial Code.

FIAs must also make sure that the financial instruments they recommend are suited to their clients' financial situation, experience and investment objectives.

²² Article 10(2) of the MiFID II Delegated Directive.

²³ Article 10(2) of the MiFID II Delegated Directive.

²⁴ <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-report-product-governance-guidelines-safeguard-investors>.

6. GOVERNANCE OF FINANCIAL INSTRUMENTS IN THE ANALOGOUS REGIME

The analogous regime provided for under MiFID II strengthens the rules on the distribution of financial instruments by FIAs, in Articles L. 541-8(2) (organisational rules) and L. 541-8-1(6) (conduct of business rules) of the Monetary and Financial Code (applicable from 3 January 2018).

Under French law, the analogous regime imposes organisational requirements on FIAs to obtain all appropriate information on the financial instrument and, where applicable, the product approval process, and to understand the characteristics and identify the target market of each recommended financial instrument, in Article L. 541-8 of the Monetary and Financial Code (applicable from 3 January 2018).

Under conduct of business rules, Article L. 541-8-1(6) of the Monetary and Financial Code (applicable from 3 January 2018) states that FIAs must *“understand the financial instruments they offer or recommend, assess their compatibility with the needs of the clients to whom they provide the advice referred to in Article L. 541-1-1, in particular based on the identified target market, and ensure that the financial instruments are offered or recommended only when this is in the interest of the client”*. It should be noted that this provision applies only to the provision of investment advice by the FIA.

To implement these provisions, the FIA will have to monitor the following three parameters:

- The characteristics of the financial instrument (level of risk, investment horizon, etc.);
- The target market: the clients for whom the instrument is intended, it being understood that these are end clients within the relevant category of clients;
- The appropriate distribution strategy for the target market.

The monitoring and adjustment of these three parameters must therefore entail:

- regularly reviewing the financial instruments distributed taking into account events likely to have a major impact on the potential risk for the target market;
- implementing measures to ensure that the financial instrument is distributed in the identified target market, by the manufacturer, where applicable;
- if necessary, modifying the target market or product governance arrangements.

However, as is the case for investment services providers, it is possible that the AMF General Regulation will allow the financial instrument governance rules to apply in a suitable and proportionate manner, taking into account the nature of the financial instrument, the product’s target market and the investment service.

Moreover, it should be pointed out that applying the new financial instrument governance measures should not call into question the rules for assessing the suitability of the product recommended to the client. Rather than replacing this assessment of the suitability of the product or service provided to the client, the product governance regime complements the system established by MiFID I with regard to investor protection in order to avoid misselling and unsuitable products being launched.

Governance of financial instruments is also consistent with the open-architecture distribution model. These new requirements mean that different distribution models can coexist and, therefore, an open-architecture model can still be promoted. Indeed, it is important—and MiFID II is a step in this direction—to make sure that a wide range of financial products remains available.

As a general rule, the FIA has more detailed knowledge of its end clients, partly obtained through know-your-customer due diligence, and is able to more accurately assess how well its own target market fits with the financial instrument / target market profile identified by the manufacturer.

If the FIA believes that a particular product fits with a target market that is different to the manufacturer's, it should get in touch with the manufacturer to assess whether the manufacturer's target market definition is still appropriate.

Lastly, the product governance and identified target market (in particular) obligations need not impede the diversification of a client portfolio (see ESMA guidelines mentioned above).

7. WHAT IS CHANGING

Under the current system	AFTER MiFID II	Impact
Non-existent	<p>Requirement to obtain information on recommended products in order to identify the target market</p> <p>Requirement to identify and respect the target market for each instrument recommended (based on knowledge of the client, ability to bear losses, objectives, etc.) in addition to verifying the suitability of the existing advice</p>	High

Section 6 – Enhanced client disclosure

SUMMARY

MiFID II strengthens the requirements regarding disclosures to clients that receive investment advice, in particular regarding the costs and charges related to the financial instruments. The ordinance of 23 June 2016 introduces into Article L. 541-8-1 of the Monetary and Financial Code the client disclosure requirements of the analogous regime.

FIAAs must make several types of disclosures to clients:

- Information about the nature and the terms and conditions of the advice;
- Information about the financial instruments and proposed investment strategies;
- Information on costs and associated charges.

In any case, the information provided to the client must be clear, accurate and not misleading.

1. GUIDELINES FOR PROVISION OF INFORMATION MAINTAINED IN MiFID II

Similar to MiFID I, MiFID II states in Article 24(3) that all information (including marketing communications) addressed by the investment firm to clients shall be clear, accurate and not misleading.

Clients should receive appropriate information about the investment firm and its services, the financial instruments and proposed investment strategies, and all costs and associated charges. This information will continue to be provided in a standardised format and should enable clients to reasonably understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis.

2. KEY DEVELOPMENTS IN MiFID II

2.1. INFORMATION SPECIFIC TO THE PROVISION OF INVESTMENT ADVICE

Where investment advice is provided, Article 24(4) of MiFID II states that the investment firm must, in good time before it provides investment advice, inform the client:

- whether or not the advice is provided on an independent basis (see Section 4);
- whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;
- whether the investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client.

The investment firm that provides such a periodic assessment must communicate its frequency and scope and, where applicable, the situations giving rise to said assessment, the extent to which information gathered previously is re-evaluated, and how the updated recommendation is to be sent to the client.

2.2. INFORMATION ON COSTS AND ASSOCIATED CHARGES

2.2.1. A combined disclosure obligation for the cost of investment services and the cost of financial instruments, as well as how the client can pay

Article 24(4) of MiFID II states that information on costs and associated charges must be communicated in good time to existing or potential clients and include information relating to investment services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payment.

According to the next paragraph in the article, costs should be aggregated to allow the client to understand the overall cost, as well as the cumulative effect on return on investment and, where the client so requests, an itemised breakdown shall be provided.

2.2.2. Disclosure frequency: *ex-ante* and *ex-post* disclosure

Article 50 of the MiFID II Delegated Regulation states that the *ex-ante* client disclosure must be based on actual costs or, failing that, reasonable estimates. The investment firm must provide full *ex-ante* disclosure (on the costs and charges associated with both the financial instrument and the service provided) where advice is provided or where instruments are marketed that require the client to be supplied with a KIID (UCITS or PRIIPS).

Ex-post disclosure should be provided annually and concerns all costs and charges associated with financial instruments and investment and related services, whether the investment firm has recommended or marketed these instruments or has provided the client with a KIID and has, or had, an ongoing relationship with the client over the course of the year. This *ex-post* disclosure is based on actual costs and is provided on a personalised basis.

Provision is also made for said *ex-ante* and *ex-post* disclosure to be provided both as a cash amount and as a percentage.

2.3. INFORMATION ON FINANCIAL INSTRUMENTS AND PROPOSED INVESTMENT STRATEGIES

The information on financial instruments and proposed investment strategies must specify whether the financial instrument is intended for retail or professional clients, taking account of the identified target market (see Section 5).

As regards the description of financial instrument risk (which was also featured in MiFID I), Article 48 of the MiFID II Delegated Regulation adds new items such as information on impediments or restrictions for disinvestment (such as may be the case for illiquid financial instruments or financial instruments with a fixed investment term), including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame, where applicable, for the sale of the financial instrument before recovering the initial costs of the transaction in that type of financial instrument.

Investment firms should provide this information to existing or potential clients in good time before the provision of investment or ancillary services.

3. THE FORTHCOMING ANALOGOUS REGIME

3.1. INFORMATION ON INDEPENDENT ADVICE

The MiFID II Delegated Regulation stipulates to what extent the content of the various documents will be affected by the analogous regime. Prior to providing any advice, FIAs may have to specify to their clients in the document establishing their relationship and/or in their letter of engagement:

- Whether or not the advice is provided on an independent basis (Article L. 541-8-1(7) of the Monetary and Financial Code applicable on 3 January 2018) – See Section 4;
- Whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments (Article L. 541-8-1(7) of the Monetary and Financial Code applicable on 3 January 2018).

Furthermore, the MiFID II Delegated Regulation states that the statement on suitability shall specify whether the FIA will provide the client with a periodic assessment²⁵ of the suitability of the recommended financial instruments.

Under the analogous regime, the AMF General Regulation could clarify these provisions.

3.2. INFORMATION ON FINANCIAL INSTRUMENTS AND PROPOSED INVESTMENT STRATEGIES

As from 3 January 2018, the MiFID II Delegated Regulation will enhance the content of the documents addressed to clients by FIAs prior to providing any advice. The information will specify the nature of the risks of the financial instruments recommended with regard to:

- The risks of losing the entire investment or of insolvency of the issuer related to leverage and its effects;
- The risks related to volatility of the price of the recommended financial instruments;
- The impediments or restrictions for disinvestment of the recommended financial instruments, in particular if they are illiquid or have a fixed investment term.

Under the analogous regime, the AMF General Regulation could clarify these provisions.

²⁵ Article 54(12) of the MiFID II Delegated Regulation

3.3. INFORMATION ON COSTS AND ASSOCIATED CHARGES

The analogous regime states that FIAs will have to provide enhanced disclosure of costs and associated charges:

- Article L. 541-8-1(5) of the Monetary and Financial Code requires that, before providing any advisory service, FIAs inform their clients in particular about the pricing of their services.
- Article L. 541-8-1(11) of the Monetary and Financial Code requires that, after advice is provided, a report be submitted to the client at least annually.

Information on costs and associated charges will no longer be able to be limited to retrocession fees received for the provision of advice and to the pricing of the services.

The MiFID II Delegated Regulation specifies the extent of the information on costs and associated charges and requires an itemised breakdown of costs and charges where the client so requests. All charges billed by the FIA for the provision of advice (Article 50 of the MiFID II Delegated Regulation) and the costs and charges associated with manufacturing and managing the recommended products could therefore be taken into consideration.

Lastly, it should be noted that costs and associated charges will have to be aggregated so the client is aware of their total impact on return on investment. The client must be able to understand the total cost and the effect of said costs on return on investment.

Under the analogous regime, the AMF General Regulation could clarify these provisions.

4. WHAT IS CHANGING

UNDER THE CURRENT SYSTEM	AFTER MiFID II	Impact
<p>The FIA provides information that is clear, accurate and not misleading</p> <p>It communicates appropriate information to the client</p>	<p>Client disclosure rules are expected to be strengthened, in particular for:</p> <ul style="list-style-type: none"> ➤ Costs and charges ➤ Information on financial instruments and proposed investment strategies ➤ Specific information when advice is provided on an independent basis 	<p>High</p>

Section 7 – Assessment of the suitability of products and services

SUMMARY

The provision of the service of investment advice requires that FIAs gather information from the client beforehand to ensure that they recommend suitable financial instruments. MiFID II clarifies the criteria of the suitability test. The analogous regime now requires an evaluation of investors' risk tolerance, as well as an assessment of their ability to bear losses, in Article L. 541-8-1(4) of the Monetary and Financial Code applicable from 3 January 2018.

1. TIGHTER CRITERIA FOR SUITABILITY TESTS

1.1. MiFID II PROVISIONS

As in MiFID I, Article 25(2) of MiFID II states that when an investment firm provides investment advice, it shall obtain the necessary information regarding the client's knowledge and experience, financial situation and investment objectives to be able to recommend appropriate services and instruments. MiFID II nevertheless specifies in this context that firms shall verify their clients' financial situation and that this includes their ability to bear losses, and that when they verify their clients' investment objectives, this includes risk tolerance.

Article 54(2) of the MiFID II Delegated Regulation requires that investment firms collect such information from their clients as is necessary to determine, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended is appropriate to the clients' situation. The transaction must meet the clients' investment objectives and in particular their risk tolerance, their financial situation, and their experience and knowledge to understand the risks involved in the transaction. Investment firms must therefore enquire about the source of their clients' income, the length of time for which clients wish to hold the investment, and their preferences regarding risk taking, their risk profile, and the purposes of the investment²⁶.

As in MiFID I, the MiFID II Delegated Regulation states that investment firms shall not provide investment advice if they have not been able to obtain the information needed to perform the suitability test²⁷.

Moreover, MiFID II states that where an investment firm provides investment advice recommending a bundled package of services or products, the overall bundled package must be suitable for the client²⁸.

²⁶ Articles 54(4) and 54(5) of the MiFID II Delegated Regulation.

²⁷ Article 54(8) of the MiFID II Delegated Regulation.

²⁸ Article 25(2) of MiFID II.

1.2. RULES CURRENTLY APPLICABLE TO FIAs

The FIA exemption regime under MiFID I already satisfies the requirement to obtain information about clients in order to recommend financial instruments appropriate to their situation. Article L. 541-8-1(4) of the Monetary and Financial Code requires a suitability test.

FIAs must apply the following criteria when performing this test:

- The client's knowledge and experience in the investment field;
- The client's financial situation and investment objectives.

Where clients do not disclose all the information about their financial situation and the FIA cannot perform the suitability test, the FIA shall not make recommendations.

1.3. ANALOGOUS REQUIREMENTS FOR FIAs

In line with the current regime, the analogous regime applicable from 3 January 2018 maintains in Article L. 541-8-1(4) of the Monetary and Financial Code the requirement that FIAs ensure that their advice is appropriate to their clients' situation.

However, the criteria for assessing suitability have been tightened in accordance with MiFID II. FIAs will now have to consider:

- the investor's risk tolerance;
- the investor's ability to bear losses.

Specifically, FIAs will have to make sure that their "know-your-customer" questionnaires cover these aspects.

2. STATEMENT ON SUITABILITY

2.1. MiFID II PROVISIONS

Article 25(6) of MiFID II introduces the requirement that investment firms set out their advice in a statement on suitability, which is provided to the client before the transaction is made, to specify the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client.

Article 54(12) of the MiFID II Delegated Regulation specifies that the statement on suitability shall include an outline of the advice given and how the recommendation provided is suitable for the client. The statement on suitability will also have to state whether the investment firm will conduct the suitability test periodically, in which case this suitability assessment will have to be performed at least annually.

2.2. RULES CURRENTLY APPLICABLE TO FIAS

Currently, Article 325-7 of the AMF General Regulation states that advice to the client shall be formalised in a written report giving reasons for the advisor's proposals, including the attendant advantages and risks. The proposals must be appropriate to clients' financial situation and experience in financial matters as well as their investment objectives.

2.3. ANALOGOUS REQUIREMENTS FOR FIAS

The analogous regime that now includes the statement on suitability in Article L. 541-8-1(9) of the Monetary and Financial Code is in line with existing arrangements. Additionally, the MiFID II Delegated Regulation specifies that investment firms will have to justify the different proposals made, not only against the current criteria of the client's knowledge, experience and financial situation, but also on the basis of criteria established by MiFID II, i.e. risk tolerance and the ability to bear losses. This statement on suitability must also specify whether the investment firm will perform a periodic suitability assessment.

Under the analogous regime, the AMF General Regulation could clarify these provisions.

3. WHAT IS CHANGING

UNDER THE CURRENT SYSTEM	AFTER MiFID II	Impact
Existence of rules on suitability tests for the provision of the investment advice service	<p>Statement on suitability</p> <ul style="list-style-type: none"> ↗ Ability to bear losses ↗ Risk tolerance <p>Verification that the client questionnaire assesses these aspects</p>	Moderate