

## AMF Instruction

### Disclosure to investors in unauthorised or undeclared AIFs – DOC-2014-02

#### Reference texts: Articles 421-33 and 421-34 of the AMF General Regulation

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#### **Article 1 – General Provisions**

##### **Article 1.1 – Purpose**

Pursuant to Articles 421-33 and 421-34 I of the General Regulation of the Autorité des Marchés Financiers (AMF), this instruction specifies:

- the content of the annual report that the management company publishes for each financial year, for each AIF it manages and for each AIF it markets;
- the content of the information the management company discloses to investors prior to subscription of shares or units for each AIF it manages and for each AIF it markets.

##### **Article 1.2 – Scope**

This instruction applies to all AIFs that are subject neither to an authorisation procedure with, nor to declaration to the AMF,<sup>1</sup> which is to say

- foreign AIFs managed by an asset management company,
- closed-ended investment companies (SICAF) governed by Book II, Title I, Chapter IV, Section 2, Sub-section 2, Paragraph 5 of the Monetary and Financial Code,
- the “Other AIFs” referred to in Article L. 214-24, III, 1) and 2) of the Monetary and Financial Code,<sup>2</sup>
- real estate investment companies (SCPI) and forestry investment companies (SEF) governed by Book II, Title I, Chapter IV, Section 2, Sub-section 2, Paragraph 4 of the Monetary and Financial Code,
- securitisation vehicles within the meaning of Article L. 214-167, II of the Monetary and Financial Code,

referred to hereafter as “AIFs”.

Unless stated otherwise, the term “management company” shall refer in this instruction to an asset management company authorised in France<sup>3</sup> or a management company authorised under Directive

<sup>1</sup> Disclosure to unit or shareholders of authorised or declared AIFs is described in Instruction n° 2011-20 for retail investment funds, professional investment funds and funds of alternative funds, in Instruction n° 2011-21 for employee investment undertakings, in Instruction n° 2011-22 for private equity investment funds, in Instruction n° 2011-23 for real estate collective investment undertakings and professional real estate collective investment undertakings and in Instruction n° 2012-06 for professional specialised investment funds and professional private equity investment funds.

<sup>2</sup> This instruction does not apply to “Other AIFs” managed by a legal entity within the meaning of Article L. 214-24, III, 3) of the Monetary and Financial Code, which is to say a legal entity managing only one or several “Other AIFs” for which the total value of the assets, combined with the other assets they manage, is below the thresholds set out in Article R. 532-12-1 of the Monetary and Financial Code and in which all the unit or shareholders are professional investors.

2011/61/EU of the European Parliament and the Council of 8 June 2011 (known as the “AIFM Directive”) in a European Union Member State other than France.

When the AIF is self-managed, the term “management company” shall refer to the AIF itself.

### **Article 2 – Annual report**

The management company shall, for each of the AIFs it manages and for each of the AIFs it markets, make available an annual report for each financial year no later than six months following the end of the financial year. This annual report shall be provided to unit or shareholders on request. It shall be made available to the competent authorities of the home Member State of the management company.

The annual report shall contain at least the following:

- the management report;
- the financial statements defined by the chart of accounts and including the certification issued by the statutory auditor;
- any material changes, within the meaning of Article 106 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012, to the information referred to in Article 3 of this instruction during the financial year covered by the report.

When the AIF is managed by a management company authorised under the AIFM Directive, the annual report shall also include:

- the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the management company to its staff, and number of beneficiaries and, where relevant, carried interest paid by the AIF;
- the aggregate amount of remuneration broken down by senior managers and members of staff of the management company whose activities have a material impact on the risk profile of the AIF.

The accounting information given in the annual report shall be prepared in accordance with French accounting standards or the accounting standards of the country in which the AIF is established.

The report issued by the statutory auditor and, where appropriate, any qualifications, shall be reproduced in full in the annual report.

Any items of information required in the annual report and not indicated in the financial statements shall be indicated in the management report.

### **Article 3 – Disclosure to investors**

Pursuant to Article 421-34, I of the AMF General Regulation, the management company shall disclose the following information to investors in the AIF, before they invest in the AIF:

a) a description of the investment strategy and objectives of the AIF, information on where any master AIF, within the meaning of the AIFM Directive,<sup>4</sup> is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;

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<sup>3</sup> Whether it has received an authorisation under Directive 2011/61/EU of the European Parliament and the Council of 8 June 2011 or not.

<sup>4</sup> This definition is transposed into French law in Article L. 214-24 IV of the Monetary and Financial Code.

- b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
- c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the AIF is established;
- d) the identity of the management company, the AIF's depositary, statutory auditor and any other service providers, and a description of their duties and the investors' rights;
- e) where the AIF is managed by a management company authorised under the AIFM Directive, a description of how it is complying with the requirements set out in Article 317-2, IV of the AMF General Regulation (or its equivalent, transposing Article 9 (7) of the AIFM Directive in the law applicable to the management company);
- f) a description of any management function delegated by the management company and any safe-keeping function delegated by the depositary, the identification of any delegate and any conflicts of interest that may arise from such delegations;
- g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets;
- h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and exceptional circumstances, and the existing redemption arrangements with investors;
- i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- j) a description of how the management company ensures fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or the management company;
- k) where available, the latest annual report referred to in Article 2;
- l) the procedure and conditions for the issue and sale of units or shares;
- m) where available, the latest net asset value of the AIF or the latest market price of the unit or share of the AIF;
- n) where available, the historical performance of the AIF;
- o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
- p) a description of how and when the information required under Article 421-34, IV and V of the AMF General Regulation (or its equivalent transposing Article 23 (4) and (5) of the AIFM Directive in the law applicable to the management company) will be disclosed;

In accordance with Article 421-34, III of the AMF General Regulation, where the AIF is required to publish a prospectus in accordance with Directive 2003/71/EC of the European Parliament and the Council of



4 November 2003, the information listed in this article and not contained in the AIF prospectus must be disclosed separately or as a supplement to the prospectus.

The management company shall inform investors of any material change to this information.