

Regulatory Watch: Asset Management

Third Quarter 2018

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France

Questions – Answers - Prohibition of promotional communications related to the provision of investment services on certain financial contracts

On August 29th, 2018, the AMF published Questions and Answers on the prohibition of promotional communications related to the provision of investment services on certain financial contracts.

Position [DOC-2017-01](#) clarifies which categories of financial contracts are subject to the prohibition on promotional communications and the characteristics of such communications. It also provides clarification on sponsorship operations in connection with financial or sponsorship contracts.

Implementation of the MMF Regulation: the AMF assists asset management companies in their authorization and management process

On July 16th, 2018, the AMF [published](#) a guide to assist asset management companies wishing or needing to have one or more of their funds approved as money market funds in order to prepare for the entry into force of the [Regulation \(EU\) 2017/1131](#) on money market funds (MMFs) on July 21st, 2018.

This Regulation establishes standard rules for the authorization process of money market funds at the European level. Consequently, any new UCITS or AIF must be approved in accordance with the MMF Regulation. Existing UCITS and AIFs with the characteristics of money market funds will also have to submit an application for authorization by January 21st, 2019.



Results of the AMF's "Online investment subscription" random surprise visits campaign

On July 10th, 2018, the AMF [published](#) the results of its random surprise visits carried out at the end of 2017 in order to obtain a clear picture of the practices of Internet actors, online banks and Fintech actors on the subscription of online investments.

This campaign of visits aimed to verify:

- New customer relationship practices
- The suitability of the investment advice given based on the profile in question
- The quality and clarity of the information provided about the funds and investment services on offer.

Visits were paid to traditional retail banks as well as to fully online banks and had the following results:

- **With regards to the products on offer:** a difference in offer policy was observed between the new Fintech actors who have a single-product strategy, the fully online banks who have a multi-product strategy and finally the traditional retail banks who seem to offer their "in-house" products as a priority.
- **With regards to the signing-up/on-boarding process:** only Fintech actors and three banks offering exclusively online services are actually offering a 100% online subscription.
- **With regards to the questionnaires and the KYC process:** improvements are being made but the approaches remain extremely varied.



Questions - Answers on the transposition of the AIFM Directive into French law

On June 26th, 2018, the AMF published Questions and Answers on the transposition of the AIFM Directive into French law.

Position [DOC-2013-22](#) is intended to answer professionals' questions in the context of the transposition of the AIFM Directive.

It provides details to the actors involved in the management of AIF on the obligation to obtain an authorization or registration, as well as, on their obligations in terms of reporting and declarations of threshold crossing. It also specifies the obligations applicable to AIF depositories.

Questions – Answers on professional specialized investment funds

On June 26th, 2018, the AMF published questions and answers on the professional specialized investment funds.

Position [DOC-2005-14](#) provides details on the provisions that apply to the management of professional specialized funds.

It details the possibility for these specialized professional funds to invest in funds that do not comply with the criteria of Article 422-95 of the AMF General Regulation, or the possibility of concluding a future contract whose underlying is a fund which is not authorized for marketing in France or a “climate derivative”.

Macro stress tests: which impact for markets and asset management industry?

On June 13th, 2018, the AMF [published](#) a study conducted by its Research, Strategy and Risk Division on macro stress tests in the field of financial markets and asset management.

This study proposes a definition of macro stress tests and details on their extension to the banking and non-banking sectors, in particular, insurance and asset management.

It also specifies the characteristics of these stress tests as well as the types of risks considered and their purposes. Finally, the study focuses on the institutional framework and potential development axes of macro stress tests.



AMF's Enforcement Committee sanctions

On June 25th, 2018, the AMF's Enforcement Committee [published](#) a decision in which sanctioned an investment service provider governed by British law.

The company was sanctioned for various allegations, such as:

- Information gaps in the investment recommendations provided to investors
- The absence of clear, accurate and not misleading content in its professional communications
- Insufficient assessment of the adequacy of the service provided to clients.

The company was sanctioned with 500,000 euros fine and with the publication of the decision.

On June 25th, 2018, the AMF's Enforcement Committee [published](#) a decision in which it sanctions an asset management company.

The company was sanctioned for various allegations, particularly the following:

- Failure to assign orders prior to their transmission for execution and to take all reasonable measures to detect conflicts of interest

- Failure to comply with its obligation to keep a record of the steps involved in carrying out transactions in a secured location
- Failure to establish and maintain operational procedures to detect any risk of non-compliance with its professional obligations
- Failure to establish and maintain an efficient compliance function.

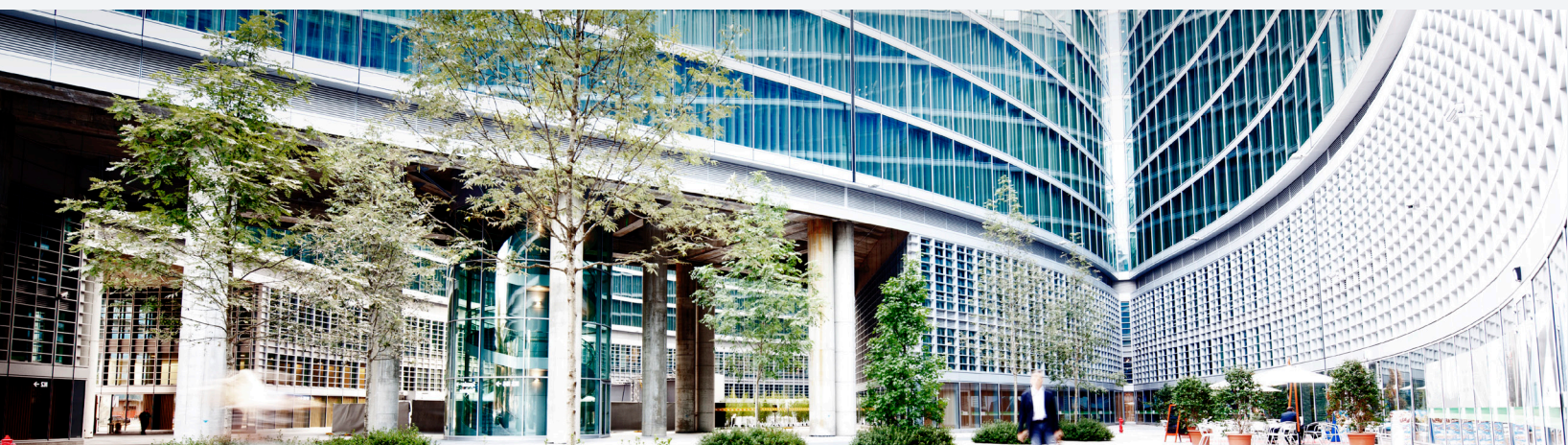
The company was sanctioned with 300,000 euros fine and with the publication of the decision for a period of 5 years.

On March 6th, 2018, the AMF's General Secretary and an asset management company reached a settlement agreement "[accord de composition administrative](#)".

The AMF pointed out allegations to the asset management company regarding:

- The level of equity and their management,
- Compliance with their activity program,
- Information given to investors about paid and received commissions and advisors.

The company was sanctioned with 110,000 euros and with the publication of the agreement.



Settlement agreement “Accord de composition administrative”

On October 9th, 2018, the AMF [published](#) a settlement agreement “accord de composition administrative” with a financial investment advisor (CIF).

Following its audit, the AMF decided to raise, on January 25th, 2018, a claim regarding the marketing of a fund to retail investors without ensuring that it has the AMF’s authorization to be marketed on the French territory.

AMF’s General Secretary and the asset management company held discussions and reached the following agreement:

The company will be committed to:

- Pay 50,000 euros to the Public Treasury “Trésor Public”
- Implement appropriate due diligence and procedures to verify that its products are authorized for marketing in France
- Identify the main risks related to its products and ensure that its documentation is accurate, clear and not misleading
- Implement a procedure related to the collection of information which allows the company to know its customers.

In case of non-compliance with the commitments of the agreement, the claim will be transferred to the Enforcement Committee.

Cooperation between the financial markets’ surveillance authorities

On June 12th, 2018, the AMF published a [memorandum of understanding](#) between the Netherlands, Ireland, Portugal, UK and Belgium’s financial markets authorities in order to



coordinate the regulation of the European regulated markets.

This agreement aims to:

- Define the arrangements under which the Signatory Authorities operate in order to maintain the integrity of the markets
- Ensure adequate regulation and supervision of the markets
- Consult and coordinate the exchange of information between the Signatory Authorities
- Organize “ongoing consultations and periodic meetings, written requests as needed, and other practical arrangements as may be developed by the Signatory Authorities”.

The different financial market authorities will be able to coordinate their local regulations in the interest of international asset management companies and investors protection.

Marketing of Financial Instruments

On July 10th, 2018, the AMF published a [press release](#) summarizing good and bad practices observed during its 2017 inspections.

The inspections identified the following good practices:

- Satisfactory provision of information to clients by the banking networks about the remuneration they receive from their group's issuers
- Remuneration arrangements for sales staff that did not seem to cause conflicts of interest
- Client knowledge questionnaires that were often recent at the time of the investment advice or subscription.

However, some inadequacies were also identified, in particular the new regulations imposed by MiFID 2, such as:

- The link between the investment advice and the reception and transmission of orders
- The traceability of the investment advice
- Cases of failure to take account of clients' profiles or investment objectives
- The assessment of clients' investment knowledge and experience.

In a [summary document](#), the AMF highlights the important regulations that supervised entities must comply with.



Stress test scenarios on money market funds

On July 21st, 2018, the AMF published the position [DOC-2018-05](#) in which it incorporates Article 28 of the Regulation (EU) 2017/1131 on money market funds.

The AMF lists the guidelines of stress tests scenarios that will have to be considered for money market funds. It should be noted that this new rule is applicable as from July 21st, 2018 for all new funds, and as from January 21st, 2019 for existing funds.

The concerned funds will have to ensure that the new parameters have been included, depending on the scheduled date.

Enforcement Committee Seminar

On October 3rd, 2018, AMF's Enforcement Committee held its [11th seminar](#).

For the period between October 6th, 2017 and October 3rd, 2018, the committee counts 30 decisions of which, 18 resulted in sanctions and 12 in settlement agreements "accord de composition administrative".

The Enforcement Committee announces that its future inspection will be so called « SPOT » (Supervision of Operational and Thematic Practices). This type of inspection has a preventive rather than a coercive objective.

The coming inspections will focus on cybercrimes such as cyber insider trading, price manipulation and diffusion of false information.

In an international framework, the AMF raises the question of the publication of sanctions in English.



Fight against money laundering and financing of terrorism

On April 18th, 2018, the Ministry of the Economy and Finance issued a [decree](#) to strengthen France's measures to fight money laundering and terrorist financing. This decree complements the 4th AML Directive.

The contributions of this decree are:

- The definition of beneficial owner: the electronic submission of documents has been simplified since April 21st, 2018
- Review of due diligence measures in the case of low or high risk of money laundering or terrorist financing, in force from October 1st, 2018
- The redefinition of certain TRACFIN missions and prerogatives, effective as of October 1st, 2018
- Review of the provisions relating to internal control procedures and processes, in force since April 21st, 2018.

Promotional communications

On September 4th, 2018, the AMF published a [position under the form of Questions - Answers](#) on promotional communications.

In this position, the AMF targets potential non-professional clients and financial contracts that are not admitted to the regulated market.

The answers provide the means to identify:

- **Which are the concerned contracts and which are the excluded ones:** for example, binary options, contracts for difference are concerned but CFDs with intrinsic protection are not concerned.
- **Which information is concerned:** electronic communications such as audiovisual or telephone communications, social networks, etc.

Investment service providers must identify whether their services fall within the scope of this position.

Key figures for asset management

The AMF published on September 25th, 2018 [the key figures for asset management in 2017](#).

Compared to 2016, amounts under management increased by 4.5%, particularly in the area of collective investment management.

Investors protection

The AMF published on September 11th, 2018 a [press release](#) to remind investors that CFDs and binary options are restricted for their interest.

ESMA's restriction measures tend to be avoided by investors who are categorized as professional clients or who open an account in a foreign subsidiary in order to avoid these restrictive measures.

As a reminder, the AMF states that in order for clients to be categorized as professionals, certain conditions have to be met.



EUROPEAN UNION

Q&As on MIFID 2 and MIFIR investor protection and intermediaries update

On July 12th, 2018, ESMA [published](#) the Q&A update on two chapters: inducements and provision of investment services by third country firms.

ESMA updated its answers for the following questions:

1. Question 12 regarding the Inducements chapter, where ESMA provides conditions under which, research services can be considered as minor non-monetary benefits acceptable during the trial period
2. Question 3 regarding the provision of investment services by third country firms chapter, where ESMA provides a non-exhaustive list of financial instruments that are not part of the reverse solicitation regime as defined in Article 42 of MIFID 2.

ESMA responds to EIOPA's questions on AIFMD

On July 25th, 2018, ESMA sent a [letter](#) to EIOPA in response to certain AIFMD-related questions raised by EIOPA.

These questions raised by EIOPA under section 11.5.2. of its second set of advice to the European Commission on specific items in the Solvency II Delegated Regulation ([EIOPA-BoS-18/075](#)).

They concern AIF definition and leverage calculation pursuant to AIFMD and its implementing measures.

Pre-trade information under MIFID 2 and MIFIR

On August 6th, 2018, ESMA updated the [transparency obligations](#) of MIFID 2 and MIFIR. The powers of the competent national authorities are strengthened. Investment firms no longer have to make certain pre-trade information public.

The update relates to:

- Equity derivatives
- Equity and equity-like instruments

ESMA published a new version of its [Q&A](#).

Application of the UCITS and AIFM Directives

On July 23rd, 2018, ESMA updated its UCITS and AIFM directives [Q&A](#).

The updates concern:

- UCITS investing in other UCITS with different investment policies
- Calculation of issuer concentration limits pursuant to Article 52 of the UCITS Directive
- Reuse of assets by a UCITS depositary
- The supervision of branches of UCITS Management Companies or AIFMs providing MiFID investment services.

The objective of these Q&As is to achieve common supervision for these regulations, which will facilitate ESMA's role in protecting investors.

Benchmark regulation

Benchmark regulation's [Q&A](#) was updated by ESMA on September 27th, 2018.

The updates concern:

- A written plan to be produced by users of benchmarks
- A systematic internaliser
- The language of benchmark statements
- The application for endorsement of family of benchmarks

ESMA's annual work programme

On July 3rd, 2018, ESMA published its [2017 annual report](#).

The major points of 2017 were:

- The convergence between MIFID 2 and MIFIR
- Assessing risks with a focus on data quality
- Single rulebook: Benchmarks and Capital Markets Union
- A supervision of UCITS and AIFM fund branches.

The objective is to ensure unique supervision and better investor protection.

ESMA opens a consultation paper on stress tests' rules for money market funds

On September 28th, 2018, ESMA opened a public [consultation paper](#) on how European money market funds (MMFs) should conduct their internal stress testing.

The purpose of this document is to provide a consistent understanding of the risks faced by money market funds.

It contains guidelines as a first step towards the development of detailed stress test standards for European money market funds.



USA

An asset management company reimburses \$1 million to investors

On September 28th, 2018, SEC **charged** an asset management company, its chairman and the CFO.

SEC claims that the interest of investors was not respected because the company misused the revenues from the funds for the parent company.

SEC, the parent company and the chairman agreed on a fine of 4.2 million dollars. The CFO was also fined.

Investors affected by these actions received \$1 million.



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