

PROGRAMME OF OPERATIONS GUIDE FOR ASSET MANAGEMENT COMPANIES AND SELF-MANAGED COLLECTIVE INVESTMENTS

References: Articles 316-3, 316-4, 317-1 to 317-5, 317-7, 318-1, 318-62, 321-2, 321-3, 321-9, 321-10, 321-13, 321-15, 321-23, 321-93 to 321-97 and 321-157 of the AMF General Regulation and Article 32 (1) of Commission Delegated Regulation (EU) 217/565 of 25 April 2016.

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

The objective of this guide is to outline what is expected by the AMF in the authorisation application of an asset management company or in the updating of the programme of operations for an already-approved asset

management company. It provides essential information for the development or update of a programme of operations in accordance with regulations.

The outline for this guide follows the outline of the “programme of operations” for asset management companies available in Appendix I of AMF Instruction DOC-2008-03, which also specifies the practical authorisation application procedures and those for information exchanges with the AMF.

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

General points

Asset management companies are investment services providers that manage one or several collective investments (UCITS,¹ AIFs,² including Other AIFs and Other Collective Investments.)³

Collective investments

Collective investment undertakings (OPC)		“Other AIFs”	“Other collective investments”
UCITS	AIF (by nature)		
These are investment vehicles subject to Directive 2009/65/EC (UCITS IV Directive).	These are vehicles that are AIFs and are listed in the Monetary and Financial Code: private equity funds, employee investment undertakings, real estate collective investment undertakings (OPCI), securitisation vehicles, etc.	These are investment vehicles which, although AIFs, are not listed in the Monetary and Financial Code.	These are collective investments that are neither UCITS nor AIFs.

They may also provide, under the terms set out in Article L. 532-9 VI of the Monetary and Financial Code, investment services of third-party order reception and transmission, third-party portfolio management and investment advice.

In other words, those entities that are approved to provide investment services (including third-party portfolio management services) but not approved to conduct a collective investment activity are investment firms⁴ and not asset management companies.

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

“1. Has its headquarters and effective management in France;

¹ Established in France or in another European Union Member State or State that is a party to the European Economic Area.

² Established in France or abroad, including in a third country in relation to the European Union.

³ For example, an open-ended investment company (SICAV) or open-ended real estate investment company (SPPICAV) established in the form of a simplified joint-stock company established by a single person and whose articles of association expressly prohibit the existence of several partners (Article L. 214-191 of the Monetary and Financial Code).

⁴ Or credit institutions.

2. Has sufficient initial capital as well as the appropriate and sufficient financial means;
3. Provides the identity of its shareholders or holders of company shares, whether direct or indirect, natural or legal persons, who have a qualifying holding as well as their level of participation; the Authority assesses the status of these shareholders in terms of the need to guarantee sound and prudent management;
4. Is effectively managed by two persons who at least possess the necessary good repute and suitable experience for their role, for the purpose of guaranteeing a sound and prudent management. The AMF General Regulation sets out the conditions for an exemption, where an asset management company may, by derogation, be managed by a single person. It outlines the measures which should be taken to guarantee the sound and prudent management of the company in question;
5. Has a programme of operations for each activity or service that the company intends to conduct or offer, outlining the conditions under which it intends to conduct the management of the collective investments mentioned in Article L. 532-9 I of the Monetary and Financial Code and provide the investment services for which it is approved, and indicating the type of operation envisaged as well as the structure of its organisation;
6. Adheres to a securities guarantee mechanism which is managed by the deposit protection fund in accordance with Articles L. 322-5 and L. 322-10."

A self-managed vehicle is a collective investment (UCITS, AIF, etc.) that manages its own portfolio without general delegation to an asset management company.

Such a vehicle (collective investment) must fulfil the conditions applicable to asset management companies and must comply with the provisions applicable to these companies.⁵ Consequently, it must have resources and an organisation equivalent to that of an asset management company and must obtain AMF authorisation. Any specific feature (e.g. share capital) must be the subject of exchanges with the AMF. By method, when the collective investment (UCITS, AIF, etc.) is self-managed, each time the term "asset management company" is used in this document, it refers to a collective investment audit. All positions and recommendations in the present guide are also, in principle, applicable to it.

However, the positions and recommendations within this document do not apply to legal persons managing AIFs who are under no obligation to obtain authorisation as an asset management company. In other words, legal entities who manage only "Other AIFs" with a total asset value⁶ of less than the €100 million or €500 million thresholds⁷ and whose unitholders and shareholders are all professional investors under the terms of MiFID. Investors are nonetheless reminded that these legal entities should register with the AMF and comply with the relevant regulations in terms of reporting.

See also:

- AMF Position DOC-2013-22 – Questions - answers relating to the transposition of the AIFM directive in French law.
- The ESMA guidelines (2014/869/FR) on reporting obligations provided by the AIFM Directive, as incorporated into AMF Position DOC-2014-09.
- AMF Instruction DOC-2013-21 – Terms and conditions of the registration of legal entities, other than asset management companies, managing certain Other AIFs.

1. REQUEST PRESENTATION SHEET

⁵ Articles L. 214-24 I of the Monetary and Financial Code and 411-1 of the AMF General Regulation.

⁶ Calculated in accordance with Article 2 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012.

⁷ Under the conditions of Article R. 532-12-1 of the Monetary and Financial Code:

- €100 million, including the assets acquired through leverage; or
- €500 million when they do not use leverage and may not repurchase units or shares for a five-year period from the initial investment date in each AIF.

1.1. Subject of the request

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

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

The person responsible for filing on the ROSA extranet affirms the completeness and accuracy of the information contained in the file presented to the AMF.

1.2. Scope of the programme of operations

(“Activities” tab of the third-party sheet on the extranet)

The description of the “Scope of the programme of operations” presents a concise overview of the collective management and investment services activities in which the asset management company is involved. This description is presented in the form of an authorisation table and must be filled in on the ROSA extranet, in section 2.A of the programme of operations. It in no way replaces the detailed description of activities and services provided, instruments used and potential restrictions; detailed descriptions of which will appear in the various sections of the programme of operations (Annex II of AMF Instruction DOC-2008-03).

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

Authorisation table

Nature of the manager	
Self-managed investment vehicle	<input type="checkbox"/>
Asset management company	<input type="checkbox"/>
A - Management activity	
Management of UCITS as defined by Directive 2009/65/EC (UCITS Directive)	
1 - UCITS	<input type="checkbox"/>
Management of AIFs as defined by Directive 2011/61/EU (AIFM Directive)	
2 - AIFs	<input type="checkbox"/>
2a - Management (operating) above the thresholds established by AIFM Directive or having opted for application of the AIFM Directive	<input type="checkbox"/>
2b - Manager (operating) below the thresholds who does not wish to opt for application of the AIFM Directive.	<input type="checkbox"/>
2c - AIF manager acting under exceptional arrangements	<input type="checkbox"/>
Management of a third-party portfolio as defined by Directive 2014/65/EU (MiFID)	

3 - Mandates	<input type="checkbox"/>
B - Authorised instruments in the programme of operations	
1 - Instruments negotiated on an organised or regulated market (listed financial instruments, negotiable debt instruments, etc.)	<input type="checkbox"/>
2 - European UCITS and AIFs available to retail clients	<input type="checkbox"/>
3 - European AIFs for professional clients and foreign country AIFs	<input type="checkbox"/>
4 - Financial instruments that are not admitted to trading on a regulated or organised market	<input type="checkbox"/>
5 - Real estate assets as defined by Article L. 214-36 of the Monetary and Financial Code	<input type="checkbox"/>
6 - Loans	<input type="checkbox"/>
7 - Derivatives and financial securities involving a derivative if they are simple	<input type="checkbox"/>
8 - Derivatives and financial securities involving a derivative if they are complex	<input type="checkbox"/>
9 - Others (to be specified):	<input type="checkbox"/>
C - Potential restrictions	
Related to certain derivative instruments and associated embedded derivatives	
1 - Hedging transactions only	<input type="checkbox"/>
Related to certain clients	
2 - Clients who are exclusively professional or similar	<input type="checkbox"/>
Other restrictions	
3 - Other particular restrictions (to be specified):	<input type="checkbox"/>
D - Other investment services	
1 - Order reception/transmission (offering this service is prohibited if only "A1" or "A1+A3" are selected)	<input type="checkbox"/>
2 - Investment advice	<input type="checkbox"/>

1.2.1. Nature of the authorised manager

This reference indicates whether the manager is external (asset management company) or internal (self-managed vehicle).

1.2.2. Management activities

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

Management of UCITS (Line A1 of the authorisation table)

Management activity of UCITS is regulated by Directive 2009/65/EC of the European Parliament and the Council on 13 July 2009, known as the "UCITS Directive", and its implementing texts, as transposed into French law in the Monetary and Financial Code and the AMF General Regulation.

This activity is conducted by asset management companies that directly manage at least one UCITS based in France, in another European Union Member State or a State that is a party to the European Economic Area (including the overall management delegation of UCITS in the form of a SICAV – an open-ended investment firm). This does not prohibit asset management companies from providing one or several investment services, in particular third-party

portfolio management services (individual mandates) or from managing any other collective investment, including AIFs, that are not included in this directive.

The relationship (possibilities and incompatibilities) between the management activity (point A of the authorisation table) and other investment services⁸ (point D of the authorisation table) that may be carried out by an asset management company (section 2.B of the programme of operations) is detailed in paragraph 1.2.5.2 below. Likewise, the possibilities regarding passports are detailed in point 5 below.

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

AIF management (Line A2 of the authorisation table)

This activity is conducted by asset management companies managing collective investments that fall under the definition of AIFs provided in Article L.214-24 I of the Monetary and Financial Code⁹ and specified by the ESMA guidelines on key concepts of the AIFM Directive (ESMA/2013/611) as incorporated in AMF Position DOC-2013-21.

This activity may:

- **be entirely subject to Directive 2011/61/EU** ("AIFM Directive") when the value of AIF assets managed, calculated according to Article 2 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 is greater than the thresholds set out in Article R. 532-12-1 of the Monetary and Financial Code¹⁰ or when the company wishes to opt for the full application of the AIFM Directive for the management of AIFs in order to enjoy the opportunities it offers (such as the passport – see point 5 below). In this case, option A2a is selected and the possibilities or incompatibilities with other activities or services are developed in point 1.7.2 below; or
- **be partially subject to the AIFM Directive** when the value of assets of the managed AIFs, calculated in accordance with Article 2 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012, is below the thresholds set in Article R. 532-12-1 of the Monetary and Financial Code and when the company does not wish to opt for full application of the AIFM directive. In this case, option A2b is selected;
- **not be subject to the AIFM directive** (for example, for the management of securitisation vehicles mentioned in Article L. 214-167 I of the Monetary and Financial Code or for the entities appearing in of Article L. 532-9 III of the Monetary and Financial Code). In this case, option A2c is selected;

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

Boxes A2b and A2c may also be selected at the same time.

However, Boxes A2a and A2b may not be selected at the same time.

⁸ "Other" therefore means anything that is not third-party portfolio management services.

⁹ Article L. 214-24 of the Monetary and Financial Code: "I. – Investment funds within the scope of Directive 2011/61/EU of the European parliament and the Council of 8 June 2011, referred to as "AIFs":

1° Raise capital from a number of investors, with a view to investing it for the benefit of those investors in accordance with an investment policy that the AIFs or their management companies define;

2° are not UCITS [...]"

¹⁰ The €100 million threshold, including assets acquired through leverage or the threshold of €500 million when the AIF does not use leverage and may not repurchase units or shares for a five-year period from the date of the initial investment in each AIF.

Positioning of the asset management company with regard to the AIFM Directive	Example(s)	Corresponding option(s) of the authorisation table	Provisions applicable to management of AIFs
Asset management company entirely subject to the AIFM Directive for its AIF management activity	<ul style="list-style-type: none"> - The asset management company is above the thresholds outlined in the AIFM Directive;¹¹ - The asset management company is below the thresholds of the AIFM directive but wishes to opt for the full application to benefit from the management or marketing passports 	Box A2a	French Monetary and Financial Code Title Ia of Book III of the AMF General Regulation. Commission Delegated Regulation (EU) 231/2013 of 19 December 2012
Asset management company partially subject to the AIFM Directive for its AIF management activity	The asset management company is below the thresholds outlined in the AIFM Directive and does not wish to opt for full application.	Box A2b	French Monetary and Financial Code Title Ic of Book III of the AMF General Regulation.
Asset management company not subject to the AIFM directive for its AIF management activity	The asset management company manages the securitisation vehicles mentioned in I of Article L. 214-167 of the Monetary and Financial Code.	Box A2c	French Monetary and Financial Code Title Ic of Book III of the AMF General Regulation.

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

¹¹ The value of the managed AIF assets, calculated in accordance with Article 2 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 is above the €100 million or €500 million thresholds as stipulated in Article R. 532-12-1 of the Monetary and Financial Code.

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

The relationship (possibilities and incompatibilities) between the management activities (point A of the authorisation table) and other investment services¹² (point D of the authorisation table) that may be carried out by an asset management company (section 2.B of the programme of operations) is detailed in paragraph 1.2.5.2 below. Likewise, the possibilities regarding passports are detailed in point 5 below.

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

This investment service¹³ is provided by asset management companies that manage one or several financial instruments on a discretionary and individualised basis by the terms of a mandate given by a third party, in addition to their collective investment management activity.

Pursuant to the provisions of Article L. 321-1 of the Monetary and Financial Code, *“investment services cover the financial instruments listed in Article L. 211-1 and the units referred to in Article L. 229-7 of the Environment Code”*. A portfolio managed on behalf of a third party may therefore contain, besides liquid assets, only financial instruments or units referred to in Article L. 229-7 of the Environment Code.

The provision of third-party portfolio management is governed notably by the provisions drawn from Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, referred to as “MiFID II” and from its delegated implementing acts, notably Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. MiFID II reinforces the existing obligations and introduces new ones: disclosure of costs and charges, product governance, a ban on retaining any payments or inducements paid or provided by third parties and warning the client if the portfolio should drop by more than 10% and for each multiple of 10%.

See also, in particular:

- AMF Instruction-Position-Recommendation DOC-2019-12 on the professional obligations of investment services providers to retail clients with regard to third-party portfolio management;
- ESMA guidelines on “certain aspects of the MiFID II suitability requirements” (ESMA35-43-1163), which are incorporated into AMF Position DOC-2019-03;
- AMF Position-Recommendation DOC-2013-10 on inducements and fees received in connection with the distribution and discretionary management of financial instruments.

The possibilities regarding passports are detailed in point 5 below.

1.2.3. Authorised instruments

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

Asset management companies are reminded that before using new instruments (as from the first euro), they are obliged to request an extension of their authorisation (Annex IV of AMF Instruction DOC-2008-03) or update relevant sections of the programme of operations (Annex II of AMF Instruction DOC-2008-03).

The various sections of the programme of operations specifically define how the below-listed instruments are to be used, as well as their main features. These sections are essential features of the authorisation requirements

¹² “Other” therefore means anything that is not third-party portfolio management services.

¹³ Defined in Article D. 321-1 of the Monetary and Financial Code.

and absolutely must be completed for each category of instrument used. Consequently, the authorisation table must always be read in light of the asset management company's programme of operations.

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

This section covers instruments which are traded on a regulated French or European market, under Articles L. 421-1 and L. 422-1 of the Monetary and Financial Code, a multilateral trading facility within the meaning of Article L. 424-1 of the Monetary and Financial Code (organised or not, including Euronext Access), an organised trading facility within the meaning of Article 425-1 or a recognised foreign market under Article L. 423-1 of the Monetary and Financial Code.

The markets addressed in this section refer to the markets defined above but also to markets which do not fit into these categories but whose characteristics allow financial instruments to be traded. The financial instruments traded on markets which may present specific problems, particularly in terms of liquidity and valuation, shall be subject to a specific description in the appropriate section of the programme of operations (sections 2.F and 2.G in particular).

Asset management companies which have selected this option can invest in monetary market instruments, traded on the market for negotiable debts, if they are liquid and have a value which can be determined at any time, in accordance with Article L. 214-20 or L. 214-24-55 of the Monetary and Financial Code.

Focus on the securities traded on markets with reduced liquidity (Euronext Growth, for example)

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

- The consistency with the management objective and the risk-return profile of the fund;
- Impact on the ability of the collective investment to honour redemption requests: the volumes exchanged on Euronext Growth, an organised market, are not comparable to the volumes exchanged on the Euronext large capitalisations. In this context, liquidity must be assessed taking into account the volume of the traded securities, such as free-float market capitalization and securities owned by the collective investment, as well as the ability of the collective investment to sell securities without influencing the price of the security. The structure of the fund's liabilities (nature and concentration of the underwriters) should again be taken into consideration here. The proportion of securities with reduced liquidity or whose liquidity may fall significantly and quickly should be determined depending on the need to access large or reasonably large portions of these assets to honour redemption requests;
- Ability of the company to value the securities traded on Euronext Growth: use of the exchange value of securities on Euronext Growth requires that they have sufficient liquidity for this value to be representative of the probable negotiation value of securities if they are sold by the collective investment. The amount of securities held by the collective investment with regards to the volumes normally traded must also be taken into consideration, to assess how representative they are. This analysis may lead the asset management company to give up on the acquisition of certain securities, given the impossibility of having them valued precisely and independently;
- Availability of information relating to the securities: the possibility of permitting the trading of shares on Euronext Growth without offering them to the public. Included in the scope of potentially eligible shares for a collective investment's assets are shares issued by entities for which available information may not be as detailed as it is for securities offered to the public. The acquisition of such securities by a collective investment requires that the asset management company adapt its selection process and the subsequent tracking of the securities.

European UCITS and AIFs which are available to retail clients (Line B2 of the authorisation table)

This section covers:

- UCITS established in France or in another European Union Member State or State that is a party to the European Economic Area; and
- AIFs established in France or in another European Union Member State or State that is a party to the European Economic Area, available to retail clients in France.

The use of UCITS/AIFs with a nature, strategy and risk profile or with unconventional characteristics in terms of the overall strategy of the managed portfolio should be subject to a distinct description in the relevant sections of the programme of operations. This could be, for example, an investment in UCITS whose liquidity is not appropriate for the managed portfolio (mandate, UCITS or AIF) or in index-tracking UCITS such as ETFs with leverage, inverse index tracking or reliance on a specific category of assets (e.g. strategy indices or indices for raw materials).

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

This section covers AIFs from France, other member states of the European Union and parties to the European Economic Area Agreement available to professional clients or similar and AIFs from third countries. Line B3 also includes, more generally, all foreign investment funds. Section 2.A of the programme of operations outlines the scope for this type of investment (e.g. foreign ETFs, hedge funds, AIFs from managed accounts on platforms etc.). The investment process, the organisation and monitoring system for the asset management company should be appropriate to the nature and complexity of the chosen funds.

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

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

This section does not cover derivatives or instruments from another instrument category listed in the authorisation table.¹⁴ If the asset management company is involved exclusively in real estate collective investment undertakings (OPCIs) or professional real estate collective investment undertakings (OPPCIs) and invests in securities of the companies mentioned in Article L. 214-36 of the Monetary and Financial Code, it is not necessary to select box B4 as well as box B5 (property assets) in the authorisation table.

When an asset management company which manages (authorised or declared) private equity funds or specialised professional funds invests in unlisted securities giving access to capital, such as bonds that are convertible into unlisted stock, it is not necessary to also select box B7, even if these securities are considered to be financial securities involving a derivative, provided that they are simple, in accordance with Appendix 1 of this guide.

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

- (i) unlisted financial instruments which, following their introduction on the market, become securities which are admitted to trading on a market; or
- (ii) financial instruments admitted to trading on a market with the intention of delisting them.

In both these cases, and only these cases, the AMF will not ask for an extension of authorisation for the selection of listed securities or securities admitted for trading to the extent that these securities are eligible for the assets of the private equity funds and have been selected, despite being listed, or they were selected, albeit listed, for the purpose of delisting them.

¹⁴ This section does not necessarily cover instruments used in marginal investments, at the express request of the client in the management mandates since these investments are covered in other categories of the authorisation table (and they must fit the range of activity of the investment management company with prior authorisation from the AMF).

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

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

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

Loans (Line B6 of the authorisation table)

In terms of collective management, certain collective investments have the option of selecting pre-existing loans (distinguishable from debt instruments that can be traded or are issued by securitisation vehicles which are covered in other lines of the authorisation table) but may not grant loans.¹⁵

In terms of third-part portfolio management (individual asset managed clients), it must be recalled that since the loans are not financial instruments, they may not be acquired in the context of asset management under Article L. 321-1 4° of the Monetary and Financial Code (but may be in the context of specific powers of attorney).

Derivatives and financial securities involving a derivative if they are simple (Line B7 of the authorisation table)

The assessment of the simple/complex nature of a derivative or financial security involving a derivative depends on the nature of its underlying, its method of valuation and its risk profile.

A non-exhaustive list of derivatives and financial securities involving a derivative that can be considered either simple or complex is presented in Appendix 1 hereto.

Derivatives and financial securities involving a derivative if they are complex (Line B8 of the authorisation table)

A derivative is complex if: (i) it is considered non-standard¹⁶; (ii) its valuation method or risk profile can be considered complex¹⁷; or (iii) its underlying is based on a non-traditional market or risk¹⁸. For example, barrier and digital options are considered complex. Moreover, a financial security involving a derivative is complex if: (i) the derivative itself is complex; (ii) the valuation method or risk profile of the security can be considered complex; or (iii) its underlying is based on a non-traditional market or risk. “CoCos” (see “Focus on ‘CoCos’” below), cat bonds and EMTNs/autocall structured certificates fall into this final category.

A non-exhaustive list of derivatives and financial securities involving a derivative that can be considered either simple or complex is presented in Appendix 1 hereto.

Focus on cat bonds

¹⁵ This latter activity is indicated in the “Others” category (line B9 of the authorisation table).

¹⁶ Within the meaning of Article 4(II) of AMF Instruction 2011-15.

¹⁷ Assessment of whether the valuation method and/or risk profile is simple or complex can be based on: (i) whether the formula for valuing an instrument is closed; and/or (ii) the linearity of instrument payoff (non-closed valuation formula and/or non-linear payoff, or if they are characteristic of a complex valuation method and/or risk profile).

¹⁸ Within the meaning of Article 3 of AMF Instruction 2012-01.

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

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

- the impact on the ability of the collective investment to honour redemption requests;
- the ability of the asset management company to assess the risk-return profile of the cat bond and its contribution to the risk profile of the portfolio and, consequently, the consistency with the management objective and the risk-return profile of the fund;
- potentially, the ability of the asset management company to hedge the cat bond position;
- the ability of the asset management company to value the cat bond.

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

Focus on "CoCos"

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

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

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

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

Focus on certain securitisation vehicles presenting high levels of sophistication

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

- the consistency with the management objectives and risk/reward profile of the collective investment: if the securities issued by securitisation vehicles, and in particular the more senior tranches, are often used as a substitution for debt instruments issued by companies and financial institutions in monetary or bond funds, they present a different risk/return profile – a credit risk with different characteristics to the credit risk for companies and financial institutions is added to the potential rate risk. Minimised by the diversification of the underlying portfolio, it may be increased by the structuring of the securitisation vehicle and requires an assessment of the correlations of credit risk for the underlying entities. As with cat bonds, the complexity of the underlying legal frameworks may also be a source of risk. The potential rating of the security must therefore be seen in light of these factors. The acquisition of such securities in a bond portfolio requires therefore an explicit mention of this possibility and consequently the management objectives and risk profile of the collective investment must be set out.
- conditions of valuation, of the impact on the risk/return profile of the collective investment and of the liquidity: the reasoning here is similar to the reasoning explained for cat bonds. The poor liquidity of the secondary market, the unequal transparency of the underlying assets, the existence of increased risk or other factors outside traditional market risks are all elements that justify additional diligence for asset management companies and may lead to the disposal of the security if any of these factors change.

Others (Line B9 of the authorisation table)

The “Others” box relates, in particular, to goods (physical gold, bottles of wine, land, etc.), transactions of acquisition or temporary transfer of financial securities when they are used in an amount exceeding the net assets of the fund, and lending activities.

Use of temporary acquisition or disposal transactions on the securities of the managed collective investment

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

- a) Temporary acquisitions or temporary disposal of securities directly by the asset management company on behalf of the collective investment

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

- b) Temporary acquisition and temporary disposal of securities on behalf of the collective investment using an external provider

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

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

When operations relating to temporary acquisitions and the temporary disposal of securities are entrusted, on a discretionary basis, to an external provider by the asset management company, and this provider can consequently choose the securities to be lent or borrowed by the collective investment, a contract for the delegation of financial management must be signed between the two parties, under the conditions mentioned in Articles 318-62 and 321-97 of the AMF General Regulation.

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

The asset management company may entrust an external provider with operations of temporary acquisition and temporary disposal of securities without being subject to the financial management delegation regime¹⁹ when this third party is acting on the basis of specific instructions.

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

The asset management company must have processes in place to allow:

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

However, when the temporary acquisitions or temporary disposal of securities are not tracked by the asset management company, and when a general and permanent instruction is given allowing the intermediary the total freedom to assess the securities to be lent in the coming weeks and to decide on the conditions of the operation, the delegated financial management regime shall apply.

The asset management company should ensure that the conditions regarding the governance and management of conflicts of interest that the provider contract may present are respected.

1.2.4. Potential restrictions

Hedging transactions (Line C1 of the authorisation table)

When the asset management company intends to limit the use of derivatives designed only for hedging transactions, this box must be selected.

The risks or markets covered and the type of instrument used must therefore be specified in the programme of operations.

¹⁹ This analysis has no bearing on the potential qualification of the execution of orders as an intermediary investment service activity under Article L. 321-1 2° of the Monetary and Financial Code.

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

This column should be selected if the asset management company only works (whether directly or indirectly²⁰ through intermediary distributors) with clients considered to be:

- professional under Article L. 533-16 of the Monetary and Financial Code (professional clients listed in Article D. 533-11 of the Monetary and Financial Code and professional clients under option) and/or;
- eligible for the underwriting or for the acquisition of shares that are open to professional investors (see the related Articles and amendments in Book IV of the AMF General Regulation).

1.2.5. Other investment services

Depending on the context of the activities it conducts and on the applicable regime (notably on whether it falls within the scope of the UCITS Directive or the AIFM Directive), the asset management company may or may not provide certain additional investment services.

1.2.5.1. Definitions

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

The service of reception and transmission of orders for a third party (RTO) is defined in Article D. 321-1 1° of the Monetary and Financial Code as "the reception and transmission, on behalf of a third party, of orders pertaining to financial instruments or one or several of the units referred to in Article L. 229-7 of the Environment Code to a provider of investment services or to an entity from a state that is not a member of the European community and is not party to the agreement on the European Economic Area, possessing an equivalent status".

The provision of an RTO service is governed notably by the provisions drawn from Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, referred to as "MiFID II" and from its delegated implementing acts, notably Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. MiFID II reinforces the existing obligations and introduces new ones: disclosure of costs and charges, product governance, payments and inducements regime, etc.

Investors are reminded that when an asset management company receives and undertakes to manage a subscription order or a buyback order for shares of an UCITS or an AIF the company is under no obligation to obtain any authorisation relating to the reception and management of the order. In particular, it is not obliged to obtain authorisation to provide a service of order execution on behalf of a third party or to receive and transmit orders for a third party in the conditions set out in Article 3 of AMF Instruction DOC-2008-04 relating to the application of the rules of good conduct for asset management companies, management companies or managers when marketing UCITS or AIF shares.

Investment advice (Line D2 of the authorisation table)

In accordance with Article 321-1 5. of the Monetary and Financial Code "the service of investment advice is defined as providing personalised recommendations to a third party, either at his/her request or at the initiative of the company providing the advice, concerning one or several transactions relating to financial instruments or to one or several of the units referred to in Article L. 229-7 of the Environment Code".

Pursuant to the provisions of Article 9 of Delegated Regulation (EU) 2017/565 of 25 April 2016, a recommendation is personalised when it is "made to a person in his/her capacity as an investor or potential investor, or in his/her

²⁰ For the purposes of this Position-Recommendation, the distribution in life insurance policies of units of account that are not reserved for certain subscribers following the same procedures as those referred to in Article R. 131-1-2 of the Insurance Code is considered to be a strategy whereby the asset management company indirectly targets retail clients. In this case, box C2 of the authorisation table should not be selected.

capacity as an agent for an investor or potential investor. That recommendation shall be presented as suitable for that person, or shall be based on a consideration of the circumstances of that person, and shall constitute a recommendation to take one of the following sets of steps:

- (a) to buy, sell, subscribe to, exchange, redeem, hold or underwrite a particular financial instrument;
- (b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation shall not be considered a personal recommendation if it is issued exclusively to the public.”

See also AMF Position-Recommendation DOC-2008-23 – Questions and answers on the provision of an investment service of investment advice.

The provision of an investment advice service is governed notably by the provisions drawn from Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, referred to as “MiFID II” and from its delegated implementing acts, notably Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. MiFID II reinforces the existing obligations and introduces new ones: disclosure of costs and charges, product governance, ban on retaining any payments or inducements paid or provided by third parties when the investment services providers informs its client that its advice is provided in an independent manner, etc.

See also, in particular:

- ESMA guidelines on certain aspects of the MiFID II suitability requirements (ESMA35-43-1163), which are incorporated into AMF Position DOC-2019-03;
- ESMA guidelines on product governance requirements under MiFID II (ESMA35-43-620), which are incorporated into AMF Position DOC-2018-04;
- AMF Position-Recommendation DOC-2013-10 on inducements and fees received in connection with the distribution and discretionary management of financial instruments.

The asset management company generally provides the service of investment advice in the context of the distribution of financial instruments (including the marketing of UCITS/AIFs). Diligence relating to this service is linked to the status of the investor to whom the asset management company offers its services (see in particular Article 54 (3) of Delegated Regulation (EU) 2017/565 of 25 April 2016).

1.2.5.2. Articulations and Incompatibilities

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

- Pursuant to Article 321-1 II of the AMF General Regulation, an asset management company that manages one or several UCITS and which is not also authorised under the AIFM Directive may not provide investment services other than portfolio management and investment advice. Consequently, an asset management company authorised only to manage UCITS may not provide RTO services (box D1). However, it is authorised, where applicable, to market the UCITS/AIFs that it manages or which are managed by another management company (see section 4.2 of this document);
- Article 316-2 III of the AMF General Regulation states that, other than the management of AIFs, an asset management company subject to Title Ia of Book III (authorised under the AIFM Directive to manage AIFs) may only provide the following investment services: order reception/transmission, portfolio management on behalf of third parties and investment advice;
- Article L. 532-9 I of the Monetary and Financial Code states that an asset management company authorised under the AIFM Directive that does not manage any UCITS may not manage one or several “Other collective investments”;

- It is prohibited for asset management companies to be depositaries for assets but are authorised to hold the list of unitholders or shareholders of their UCITS/AIFs;
- An asset management company may hold the status of member of a regulated market only in the context of its portfolio management activity. In this case a prior update is necessary.

2. CHARACTERISTICS OF THE ASSET MANAGEMENT COMPANY

2.1. Identity

(“Legal entity” tab of the third-party sheet on the extranet)

2.1.1. Form of the Asset management company

Articles 317-1 and 321-9 of the AMF General Regulation state that an asset management company *“may be incorporated in any form, subject to a review of its articles of association to ensure they are compatible with the laws and regulations applicable to the company and provided its accounts are subject to a statutory audit”*.

Therefore, the asset management company taking the form of a simplified joint-stock company (SAS) must designate an auditor.

The asset management company taking the form of limited liability (SARL) must designate at least one Primary Auditor and an Alternate Auditor.

When the asset management company is a limited partnership or a simplified joint-stock company (SAS) the asset management company ensures that the principle of decision-making autonomy for senior managers and/or managers is clearly defined in its articles of association. Likewise, in the case of a simplified joint-stock company (SAS), the articles of association must also describe the powers of the senior managers other than the president. Investors are reminded that the latter may also be a legal entity.

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

2.1.2. Headquarters

The headquarters of the asset management company must be located in France. The asset management company may separate its headquarters and administrative base, both of which must be situated in France.

The location of the headquarters is, in principal, wherever the asset management company's legal, financial, administrative and technical management are based.

2.2. Shareholding and holdings

(“Equity and shareholding” tab of the third-party sheet on the extranet)

Shareholding of the asset management company

Pursuant to Articles 317-4 and 321-12 of its General Regulation, the AMF assesses the quality of the direct and indirect shareholders that are indirect natural and legal persons and have a qualifying holding and the amount of their holding given the need to guarantee sound and prudent management of the company and the proper

fulfilment of its own supervisory function. The same assessment should be applied to associates and members of an economic interest group.

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

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

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

In the authorisation application, the asset management company must provide the identity and position of each of the capital providers, natural or legal persons that have direct or indirect control of more than 10% of the capital or voting rights. However, while examining the application, the AMF departments may ask for an exhaustive list of capital providers if it believes this to be necessary to form a complete understanding of these providers.

Any person who directly or indirectly holds a qualifying holding must, for each shareholder, forward to the AMF the specific information mentioned in the declaration of the capital providers displayed in Appendix 3-A of AMF Instruction DOC-2008-03.

Recommendation

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

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

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

Holdings of the asset management company

Pursuant to the provisions of Articles 317-8 and 321-16 of the AMF General Regulation, “an asset management company may hold interests in companies whose activities are an extension of their own activities. These holdings must be compatible with the provisions that the asset management company is bound to respect regarding the detection and prevention or management of conflicts of interest which may result from these holdings”.

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

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

The “Acquisition of holdings by the asset management company” table in section 2.N of the programme of operations must be completed where appropriate.

The asset management companies concerned forward to the AMF the accounting data, where applicable, consolidated as well as an analysis of the impact of the holding acquired on the company’s capital (paragraph 6 of this document).

See also AMF Position DOC-2009-24 specific to changes in the shareholding of asset management companies.

2.3. Senior managers under Article L. 532-9 II 4° of the Monetary and Financial Code

(“Governance” tab of the third-party sheet on the extranet)

2.3.1. Persons effectively managing the asset management company

Article L. 532-9 II 4° of the Monetary and Financial Code maintains that the asset management company “be managed by two persons of sufficiently good repute and experience appropriate to their position in order to guarantee sound and prudent management”. Pursuant to Article L. 532-9 of the Monetary and Financial Code, the AMF General Regulation sets forth the conditions under which an asset management company may, by way of derogation, be effectively managed by only a single person.

In all cases, the senior managers are natural persons exercising operational and effective functions.

The management company must specify in the programme of operations the persons who effectively manage the asset management company and must attach the CV of each senior manager to the authorisation application file.

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

The AMF has several sources of information that it uses to assess the integrity of the designated senior manager. In particular:

- all information requested in Appendix 3-B of AMF Instruction DOC-2008-03 (this information is given particular attention by the AMF, it is therefore imperative that the designated senior manager be very precise when writing them out and that he/she does not leave out any fact that should be brought to the attention of the AMF);
- the senior manager must include a copy of his/her criminal record certificate (report no. 3) with this annex;

- the AMF consults the various competent authorities when the asset management company is part of a group (Article R. 532-15 I of the Monetary and Financial Code) and when the senior manager has held a position in a regulated foreign entity.

Moreover, the AMF reserves the right to consult report no. 2 of the criminal record certificate under Article 776 of the Criminal Procedure Code.

The AMF has already refused the designation of a senior manager under Article L. 532-9 II 4° of the Monetary and Financial Code, for example, on the grounds that:

- the person received a financial penalty and received a reprimand from the AMF Enforcement Committee;
- the person, in another application, was in the past dismissed for gross misconduct, the reason for which was linked to the management; or
- the person was dismissed for misconduct and did not convey this information to the AMF prior to the assessment of the authorisation application of the company by the AMF.

Moreover, the senior managers within the meaning of Article L. 532-9 II 4° of the Monetary and Financial Code must sit the exam to assess their level of knowledge, as mentioned in Articles 314-9, 318-7 or 321-37 of the AMF General Regulation where the senior manager performs a function addressed by these provisions (manager or salesperson, for example).

Asset management companies with two executive senior managers

Articles 317-5 and 321-13 of the AMF General Regulation state that *“at least one of these two persons must be an executive director authorised to represent the company in its dealings with third parties. The other person may be the president of the board of the directors or someone specially authorised by the collegiate executive bodies or articles of association to manage and determine the direction of the company”*.

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

For example, the Chief Executive Officer may be, for:

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

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

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

Asset management companies with one sole senior manager

In accordance with Article 321-157 of the AMF General Regulation: *“an asset management company may, by way of derogation from Article 321-13, be effectively managed by only one senior manager when the following conditions are met:*

- 1. The asset management company does not manage any UCITS;*
- 2. The total outstanding amount managed by the asset management company is below €20 million or, if the amount is higher, the asset management company is only authorised to manage professional equity funds;*
- 3. The collegiate executive bodies or articles of association of the asset management company have designated a person to immediately replace the senior manager in all his/her functions when it is impossible for him/her to perform these functions;*
- 4. The person designated pursuant to point 3 has sufficient good repute and suitable experience in his/her position as senior manager for the purpose of ensuring the sound and prudent management of the asset management company. He/she must have the necessary availability to be able to replace the senior manager”.*

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

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

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

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

Asset management companies with two executive senior managers

Articles 318-1 and 321-23 of the AMF General Regulation establish the principle of the asset management company's permanent availability. The AMF considers that at least one of the senior managers should be in the company full-time.

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

For example, mechanisms and procedures should be put in place in order to:

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

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

Asset management companies with one sole senior manager

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

2.4. Corporate officers who are not designated as senior managers

("Governance" tab of the third-party sheet on the extranet)

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

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

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

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

("Asset management company" tab of the third-party sheet on the extranet)

Each asset management company joins an industry group of its choosing, responsible for the collective representation and defence of the rights and interests of its members.²¹

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

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

3. ACTIVITIES AND ORGANISATION OF THE ASSET MANAGEMENT COMPANY

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

(Sections 2.A and 2.B of the programme of operations)

Third-party management activities (management of UCITS, AIFs or individual mandates (third-party portfolio management investment services)) and investment services that may be carried out by an asset management company are defined in sections 1.2.2 and 1.2.5 above. Certain other activities that may be carried out by the asset management company are specified below.

Sections 2.A and 2.B of the programme of operations present the activities of the asset management company. They must be duly completed ensuring the information mentioned is presented in a concise manner.

²¹ Article L. 531-8 of the Monetary and Financial Code, applicable to asset management companies by reference to Article L. 532-9 VII of the same code.

Management of arbitrage mandates in the context of unit-linked life insurance policies

Sometimes the underwriters of a unit-linked life insurance policy entrust the asset management company, via a mandate, with the option, depending on the trade-offs (arbitrage), to modify on a discretionary basis, in their name and on their behalf the units which were initially selected. The asset management company is asked to commit to applying the rules relating to organisation and good conduct that are identical to those applicable to third-party portfolio management services to this arbitrage activity in the context of unit-linked life insurance policies. However, the AMF will not oppose²² asset management companies that do not commit to comply with the three following rules from MiFID II within the framework of their unit of account arbitrage activity:

- The prohibition on retaining any commissions:²³ in this case, the asset management companies must nonetheless, as applicable, continue or undertake to apply, in their unit of account arbitrage activity, the provisions pertaining to payments and inducements applicable except in “independent” investment advice and in third-party portfolio management and in Article 533-12-4 of the Monetary and Financial Code,²⁴ which is to say (i) to inform the client clearly of the amount of commissions received or, if this amount cannot be established, its calculation method and (ii) ensure that the sums received serve to improve the quality of the service provided to the client and are in no way detrimental to compliance with the obligation of the asset management company to act in the best interests of the client;
- The new requirements concerning ex-ante and ex-post disclosure of related costs and charges, as set out in Articles L. 533-12, II and D. 533-15, 3° of the Monetary and Financial Code²⁵ and in Article 50 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016;
- The duty to warn the client if the value of the portfolio drops by 10%, as set out in Article 62 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

Other

If the intended activity is not listed in the table in section 2.B of the programme of operations, the asset management company must contact its portfolio manager to verify that it can carry out the intended activity.

The asset management company must then indicate any other ancillary activities that are not specifically addressed in previous sections, such as insurance brokerage, the management of powers of attorney and benchmark administration.²⁶

It is stated that these ancillary activities may be carried out if they are an extension of the management activity.

Accordingly, the asset management company may engage in activity related to the management of powers of attorney, particularly in real estate or when selecting debts if this is an extension of its main activity.

²² Pending clarification of the legislative and regulatory texts.

²³ Resulting from Article L. 533-12-3 of the Monetary and Financial Code and applicable to asset management companies that are authorised to provide the third-party portfolio management investment service by reference to Article L. 532-9 VII of the Monetary and Financial Code.

²⁴ Applicable to asset management companies that are authorised to provide the third-party portfolio management investment service by reference to Article L. 532-9 VII of the Monetary and Financial Code.

²⁵ Applicable to asset management companies that are authorised to provide the third-party portfolio management investment service by reference to Article L. 532-9 VII and Article R. 532-16 of the Monetary and Financial Code.

²⁶ Benchmark administration is defined in Regulation (EU) 2016/1011 of the European Parliament and of the Council.

An asset management company may only offer brokerage services for life insurance policies if this is a method of marketing the collective investment. This activity must be an extension of the asset management company's main activity.

3.2. Organisation of the asset management company

3.2.1. Human resources

("Key roles" tab of the third-party sheet on the extranet)

Presentation of the human resources

In accordance with Articles 318-1 and 321-23 of the AMF General Regulation, the asset management company permanently uses resources, especially human resources, which are appropriate and sufficient.

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

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

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

Description of human resources and distribution of roles

The programme of operations must make it possible to identify those responsible for the main activities planned as well as:

1. the number of employees assigned to each role or department;
2. the number of managers assigned to financial management;
3. the number of persons assigned to sales roles;
4. the number of persons assigned to support roles.

The time that each person spends at work must be specified. For persons occupying other roles within the group or in other companies, their responsibilities should be described in detail. In this case, the "Conflicts of Interest" section should be completed to describe the nature of the other roles performed and how conflicts of interest are prevented.

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

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

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

By way of exception, the AMF considers that a financial manager may not work full-time for the company (in the sense that they may carry out other regulated activities) if, and only if, the following cumulative conditions are satisfied:

- The company only deals with professional clients or equivalent;²⁷
- The number of transactions carried out annually is limited (private equity or real estate, in particular);
- Adequate resources are ensured at all times, meaning that there is a sufficient number of other members of the management team (two other managers working on the same asset class are present full-time);
- The complete absence of a risk of a conflict of interests is justified (a completely distinct investment universe, the absence of a business relationship between the companies);
- The different management structures belong to the same group in the case of shared management.

Financial managers' experience

In accordance with Articles 321-23 of the AMF General Regulation and 22 of Commission delegated regulation (EU) 231/2013 of 19 December 2012, the asset management company shall employ staff with the skills, knowledge and expertise required to carry out the responsibilities entrusted to them.

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

Managers must also have experience of the vehicle (real estate investment companies, securitisation investment funds, employee savings plan investment funds, etc.) whenever it is operated in a specific way. In certain cases, the manager's experience of the vehicle may be replaced by that of a middle office manager with the necessary experience.

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

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

(Section 2.C of the programme of operations)

The items below also concern, where appropriate, section 2.A and 2.B of the programme of operations when it deals with technical resources related to other activities and investment services.

In accordance with Articles 318-1 and 321-23 of the AMF General Regulation, the asset management company shall have adequate resources at all times, in particular adequate and sufficient equipment.

Tools and computer software shall be briefly described in the programme of operations, distinguished according to their scope of use (databases, holding and monitoring portfolios, valuation, calculation of the overall risk ratio,

²⁷ Here, in the sense that they are eligible for the underwriting or for the acquisition of shares in funds that are open to professional investors (see the related Articles and amendments in Book IV of the AMF General Regulation).

managing risk, order execution, etc.). The procedures for developing, monitoring and validating settings must allow the asset management company to ensure the smooth operation, robustness and relevance of the tools used. The programme of operations shall also briefly describe the asset management company's arrangements for data retention, archiving and cybersecurity.

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

In the case of technical resources (decision making tools, databases, order execution tools or those for holding/valuing portfolios etc.) provided by a third party (group or service provider), the asset management company must ensure the implementation of measures guaranteeing its independence from the third party and describe these items in the authorisation application (for example: data confidentiality, conditions in the event of a breach of contract to ensure the continuity of operations).

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

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

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

These arrangements must in all cases ensure that the asset management company observes the provisions of Article 321-23 of the AMF General Regulation or Article 318-1 of the AMF General Regulation and Article 57 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012. The agreements must be attached to the authorisation application.

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

3.2.3. Investment and disinvestment processes

(Section 2.D of the programme of operations)

The asset management company's investment processes extend from the generation of strategic ideas, investment decisions, their implementation and up to disinvestment. The programme of operations must describe the general principles employed by the asset management company for organising the investment process(es) for each of the types of management undertaken.

The asset management company must, in particular, specifically describe the stakeholders, their role, decision-making methods and the traceability of these decisions.

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

Recommendation

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

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

3.2.4. Order allocation and routing

(Section 2.E of the programme of operations)

Projected allocation of orders

Article 314-12, Article 321-107 IV of the AMF General regulation and Article 25 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012, define the regulations for handling orders. These provisions provide that the requirements for provisional allocation of orders are identical, whether or not the company falls within the scope of Title Ia or Title Ib of Book III of the AMF General Regulation.

Section 2.E of the programme of activity shall describe the procedure for the projected allocation of orders. It shall also describe the situations and conditions in which the final allocation may differ from the predicted allocation determined previously.

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

Order routing

Section 2.E of the programme of operations shall contain a detailed diagrammatic representation of the route through which orders pass and the persons or services involved at each stage.

3.2.5. Best execution/selection policy

(Sections 2.C, 2.E and 2.G of the programme of operations)

Best selection policy

When the asset management company transmits orders to other entities for execution, including those orders resulting from its decisions to trade financial instruments on behalf of the collective investments it manages, it must implement a best selection policy²⁸ which must include, among others:

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

²⁸ See notably Article 321-114 of the AMF General Regulation, Article 28 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 and, for the provision of services of third-party portfolio management and third-party reception and transmission of orders, Article 65 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

An asset management company may select a single provider for the transmission of its third-party orders, provided that it is able to demonstrate that this allows it to achieve the objective of obtaining the best possible outcome for its clients.

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

Section 2.E of the programme of operations shall include the policy for selecting the entities to which the asset management company intends to send the orders resulting from its investment decisions. However, it must make it possible to understand the structure chosen by the asset management company for defining and updating it. It should be recalled that these entities are selected based on price, cost, speed, probability of execution and payment, size, the nature of the orders and any other considerations relating to order execution. However, the quality of analysis or research services is not among the accepted selection criterion of an execution intermediary.

Companies are also reminded that:

- when orders are related to investment decisions taken on behalf of UCITS/AIFs, the relative importance of these factors is determined by referring to the criteria set out in Article 321-110 of the AMF General Regulation or in Article 27 (2) of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 (the characteristics of the order in question, the characteristics of the financial instruments concerned by the order, the characteristics of the places of execution to which the order may be transmitted and the objectives, investment policy and risks specific to the UCITS or AIF and indicated, as applicable, in the prospectus, regulations, articles of association or offer documents);
- when the orders relate to investment decisions made on behalf of professional clients, the relative importance of these factors is determined by referring to the criteria set out in Article 64 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016;
- when the orders relate to investment decisions made on behalf of retail clients, the best possible result is determined on the basis of the total cost as defined in Article L. 533-18 I of the Monetary and Financial Code.

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

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

An asset management company may be admitted as a member of a market when it does not receive and transmit orders on behalf of third parties, and shall only execute orders on the market in question originating from managed portfolios. This point must then be subject to a specific description in section 2.E of the programme of operations.

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

Monitoring positions and determining net asset values

The programme of operations shall indicate:

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

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

3.2.6. Control system

(Section 2.F of the programme of operations)

With respect to the provisions applicable to it,²⁹ in section 2.F of its programme of operations, the asset management company must describe:

1. The resources available for carrying out controls;
2. The general arrangements for these controls;
3. The control and monitoring procedures that it intends to put in place. These resources, arrangements and procedures shall be warranted by the nature, size, complexity and diversity of the asset management company's activities.

The asset management company shall have a policy, arrangements and a control plan suited to its activity and which enable it to fulfil all its professional obligations.

Pursuant to Articles 321-31 and 321-32 of the AMF General Regulation and Article 61 (3) (a) of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012, the person or persons responsible for compliance and internal controls (RCCI) must have the independence, authority, resources and expertise necessary to fulfil their task effectively. They must also have access to all the relevant information required for carrying out their task.

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

For more detail on implementing compliance and internal control systems, or even risk management systems, please refer to AMF Position-Recommendation DOC-2014-06 "Guide to organising risk management, compliance and control systems in asset management companies" and, where applicable, AMF Position DOC-2021-04 "Compliance function requirements"

and to AMF Instruction DOC-2006-09 "Examination for the issuance of professional licences to compliance and internal control officers and investment services compliance officers" and AMF Instruction DOC-2012-01 "Risk management organisation for collective investment undertaking management activities and third-party portfolio management investment services". When the asset management company is authorised to provide investment services, it must also refer to AMF Position DOC-2021-04 "Compliance function requirements".

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

The AMF reminds asset management companies that responsibility to meet their professional obligations rests with their senior managers, whether the control be carried out internally or externally by a service provider.

3.2.6.1. Compliance and internal control system

Organisation of the compliance and internal control system

In accordance with Article 321-23 of the AMF General Regulation and Article 57 (1) (a) of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012, the asset management company shall establish and maintain operational decision-making procedures and a well-documented organisational structure that clearly defines lines of authority and assigned functions and responsibilities.

²⁹ Articles 316-3, 317-7 and 318-1 of the AMF General Regulation or Articles 321-2, 321-15 and 321-23 of the AMF General Regulation.

Section 2.F of the programme of operations must thereby present, clearly and legibly, the organisational structure chosen by the asset management company, making it possible to identify the persons in charge of compliance and internal control functions, and the allocation of roles between the different employees.

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

RCCI senior manager and outsourcing of control tasks

When the asset management company appoint one of its senior managers as compliance and internal control officer and outsources all or part of his/her duties, the authorisation application shall include the draft outsourcing contract signed with the service provider concerned. This contract must mention, in particular, the scope of intervention, the anticipated stakeholders (the person actually carrying out the controls and the person assuming responsibility for this), the number of days of intervention anticipated per month and per year for the outsourced control tasks.

In the case of outsourcing, the opinion of a board of examiners for awarding an RCCI professional licence mentioned in Articles 318-33 and 321-66 of the AMF General Regulation may be requested by the AMF in order to decide on the conditions for outsourcing RCCI functions pursuant to Articles 318-35 and 321-68 of the AMF General Regulation. Since the opinion of the board is given after approval of the asset management company, if it is unfavourable, the AMF may subsequently request organisational changes within the asset management company. No professional licence will however be awarded to an officer of service provider following the opinion of the board.

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3.2.6.2. Risk management

Pursuant to Article 321-77 I of the AMF General Regulation and Article 39 (1) of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012, and Article 312-45 for the provision of the third-party portfolio management service, the asset management company establishes and keeps operational a permanent risk management function.

The asset management company must adopt appropriate and effective processes and procedures in order to:

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

Section 2.F of the programme of operations shall describe this function in accordance with AMF Instruction DOC-2012-01 relative to the organisation of the collective investment management and third-party portfolio management activity in terms of risk management and to AMF Position-Recommendation DOC-2014-06 – Guide to the organisation of the risk management, compliance and control systems within asset management companies. In accordance with AMF Position-Recommendation DOC-2014-06, when the asset management company does not put in place a permanent risk management function independent of the organisational structure and which is a function of operational units, it must justify this with the AMF by indicating in its programme of operations the reasons leading them to derogate from this obligation.

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

3.2.7. Valuation of the instruments used

(Section 2.G of the programme of operations)

The methods used for valuing instruments (distinct from determining net asset values within the context of collective investments) must be described in section 2.G of the programme of operations. The methods for validating the net asset value must also be described.

Furthermore, if the asset management company is fully subject to the AIFM Directive for its AIF management activity (if box A2A of the authorisation form is ticked), specific information on the independent evaluator needs to be included.

3.2.8. Outsourcing and delegation

(Section 2.H of the programme of operations)

The provisions relating to outsourcing are laid down in Articles 318-58 to 318-61 and 321-93 to 321-96 of the AMF General Regulation and in Articles 31 and 32 (1) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

The provisions relating to delegation of AIF or UCITS management are laid down in Articles 318-62 and 321-97 of the AMF General Regulation.

3.2.8.1. General conditions

The asset management company shall define in section 2.H of its programme of operations the tasks and functions which it intends to outsource/delegate in the form of summary tables including, in particular:

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

Asset management companies must retain added value in managing the risks associated with the structure in place.

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

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

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

Outsourcing to an extent that makes the asset management company into a letter box entity must be deemed to be in violation of the requirements that the asset management company must comply with to obtain and keep its authorisation.

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

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

The financial management outsourcing/delegation agreement must be attached to the authorisation application.

Recommendation

It is recommended that any outsourcing/delegation agreement include:

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

If the asset management company is fully subject to the AIFM Directive for its AIF management activity (if box A2A of the authorisation form is ticked), specific information on the conditions of the delegations granted must be produced in point 3 of section 2.H.

3.2.8.2. Provider/delegate controls

It is up to the asset management company to demonstrate that its control system makes it possible to monitor, at any moment, delegated management or outsourced tasks, and to manage additional risks associated with outsourcing/delegation.

This ability to monitor requires an understanding of the outsourced/delegated activities.

The control system is standardised and traceable. It shall generally be based on:

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

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

3.2.8.3. Specific conditions for delegating portfolio management

Portfolio management includes both financial management and risk management.

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

Financial management of UCITS or AIFs shall fulfil the conditions defined in Articles 318-62 or 321-97 of the AMF General Regulation, depending on the case.

In particular, it may only be delegated to a person authorised for asset management, which includes any person authorised to manage collective investments by a public authority or provide portfolio management services for third parties.

The specific conditions relating to the delegation of financial management of a UCITS or AIF by an asset management company must be detailed in section 2.H of the programme of operations.

The asset management company wishing to delegate the financial management of a collective investment, pursuant to Article 318-62 or Article 321-97 of the AMF General Regulation, to an entity which has its registered office or place of business, respectively, in a third country, shall send the AMF confirmation of the delegate's authorisation to manage collective investments or provide portfolio management services for third parties.

Cooperation between the AMF and this institution's supervisory authority must be ensured.

The planned scope of delegation must be presented in summary form in the programme of operations.

The following information must be specified:

- The amount of assets delegated (including the direct management/delegated management ratio), distinguishing, if relevant, depending on the nature of the strategies;
- The types of strategies implemented and the financial instruments used in order to identify those that generate an increased level of risk, both in terms of risks related to the strategy itself (market risk, operational risk, legal etc.) and in terms of the difficulties that these could create regarding effective controls carried out by the asset management company on the activity of the delegated company;
- The controls put in place within this context;
- The procedures for selecting delegate companies from among eligible firms (due diligence carried out on the risks associated with the legal and regulatory environment of providers, on the one hand, and those carried out on the resources and organisation of these on the other);
- The procedures and due diligence implemented by the asset management company enabling it to comply with the provisions of Articles 318-62 and 321-97 of the AMF General Regulation relative to delegating management of UCITS and AIFs.

Concerning the due diligence, three cases may be highlighted:

- When the asset management company delegates a management strategy the risk/reward profile of which is similar to that of strategies it implements directly, delegation requires:
 - on the one hand, adapting the existing control system to the fact that management will be delegated and will be the subject of a first level control within the delegated company. This usually involves the delegating asset management company adjusting the nature and frequency of certain controls according to its assessment of the ability delegated company to exercise and monitor its activities in accordance with the applicable rules;
 - on the other hand, identifying the operational risks associated with the delegation, and taking the necessary steps to manage and control the effectiveness of this management.
- When the asset management company delegates management to an entity belonging to the same group, the risk/reward profile of which differs from the strategies that it implements directly, assessment of the effectiveness of the control system implemented by the delegating management company shall take into account the existence of a control system at the group level. It would in fact not be particularly relevant to require duplication within the delegating management company of controls already implemented within the context of group control systems. However, the delegating management company's responsibility remains unchanged and it should ensure that the group's control system is effective with regard to delegated management.

For example, this may concern an asset management company belonging to a group that has decided to structure itself around units of expertise, locating all the expertise related to a type of management in one place.

- When the asset management company delegates to an entity not belonging to its management group, the risk/reward profile of which differs to the strategies it usually implements, it is up to it to demonstrate that it remains nonetheless able to control the delegated activities and the additional risk associated with the delegation (due diligences, a priori, and delegation in progress, determining criteria, limits applicable to delegated companies, control procedures and relevant indicators). Under these circumstances, the delegating asset management company shall be required to have a risk control function that has suitable experience for the strategy and underlying asset, and the necessary capacities to ensure effective control.

Balance between non-delegated management and delegated management activities

In view of the ban on letterbox companies (the provisions of Article 82 of Regulation (EU) 231/2013 and Articles 318-58, 321-93 and 321-97 of the AMF General Regulation), the AMF considers that the asset management company may not delegate the entire management of collective investments and mandates for which it is responsible.

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

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

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

b) Specific conditions for delegating risk management

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

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

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

3.2.9. Conflicts of interest

(Section 2.1 of the programme of operations)

3.2.9.1 Conflict of interest management policy

In accordance with Article 321-48 of the AMF General Regulation, Article 31 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 and Article 34 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016:

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

This policy shall be established, as applicable, in accordance with Articles 321-46 to 321-50 of the AMF General Regulation, Article 318-13 of the AMF General Regulation, Articles 30 to 36 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 and Articles 33 and 34 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

The AMF may consider that the conflict of interest policy implemented in an asset management company is insufficient to avoid situations of conflicts of interest. The AMF appraises this organisation rule according to its effectiveness in light of its objective, which is to prevent any conflict of interest being detrimental to the interests of the clients. This appraisal is conducted initially at the time of authorisation, at any time during inspections and whenever the programme of operations of the management company is updated.

The asset management company is required to identify the main sources of conflicts of interest resulting either from its organisation or from its main activities (private equity, real estate) and ancillary activities. The programme of operations must detail the risks and supervisory measures linked specifically to their organisation and activity. The complete mapping must be kept up to date at all times and made available to the AMF.

For example, a certain number of situations encountered regularly should be the subject of a specific description, where applicable:

- co-existence of own-account and third-party activity within the group;
- sharing premises;
- transactions in non-listed securities, both debt and equity, on the same issuer and within different portfolios etc.

3.2.9.2 Frequent cases of conflict of interest management

The following situations highlight the main issues of conflict of interest encountered when examining files in matters of supervision and management of the conflicts of interest inherent to real estate management activities and to the organisation of certain groups combining real estate activities for their own account with management for third parties. They present the systems selected in order to avoid or manage conflicts of interest and to ensure that they can in no way be detrimental to the interests of investors in the collective investment or of clients of the asset management company.

They are provided as a reference for actors facing similar situations, with a view to adapting the organisation and control system.

It should be pointed out that the particular situations presented hereafter are in no way representative of all the files appraised by the AMF. However, the solutions that were adopted in these individual cases may help other management companies to identify and handle similar conflicts of interest in their organisations. Although they are presented within the framework of collective investments in real estate assets, the positions and

recommendations below are applicable to the management of all categories of assets or vehicles (for example, real estate investment companies (SCPI), private equity, election of debts, etc.).

a) “Shared” senior manager

A senior manager shared between a company with an own-account management activity and another company with a third-party management activity

Risks for investors

The “shared” senior manager is in a position that prevents them from making independent choices between the interests of the own-account activity and those of the third-party activity. There is therefore a risk that they may give preference to the own-account activity over the third-party activity.

Examples:

Case 1 – The own-account activity wishes to dispose of an asset that it is unable to sell on the market at the price it wants because it is overvaluing it. The asset is therefore acquired by the asset management company at this (excessive) price on behalf of a vehicle managed on behalf of third parties.

Case 2 – An asset is identified. It corresponds to the management strategy of the vehicles managed on own account and those managed for third parties. The asset is allocated on a discretionary basis to the own-account management vehicle, implying a missed opportunity for the third-party management vehicle.

Subject to examination of specific cases, the AMF considers that such a situation requires the conflict of interest to be eliminated by appointing different senior managers for the company that has own-account activities and that having third-party management activities. In this way, the decision will no longer be in the hands of the same person.

Senior manager shared between two companies having a third-party management activity, regulated or not

Risks for investors

The “shared” senior manager is in a position that prevents them from making independent choices between the interests of the third-party investors of the different entities. There is therefore a risk that they may give preference to the interests of certain investors to the detriment of the others.

Examples:

Case 1 – A target may be of interest to vehicles managed by each of the companies, thus causing a conflict of interest.

Case 2 – The senior manager may have an interest in giving preference to the clients of one fund over another and thus encouraging the acquisition by the non-preferred fund of a real estate asset sold by the preferred fund at an excessively high price.

Recommendation

In situations of this type, it is recommended to:

- **implement distinct strategies between the different vehicles to avoid conflicts of interest or, if this approach is not chosen,**
- **place the conflict of interest within just one of the two entities so that it can be managed pursuant to a single conflict of interest management policy that is known to the investors. The conflict of interests can be “internalised” either by having a single management entity (by merger of the existing entities) or by organising to have the vehicles of one of the entities managed by the other.**

However, the AMF draws the attention of companies to the options they choose and the vigilance they require, as neither of these systems totally eliminates the risk of conflicts of interest.

Example:

The AMF expressed a certain number of reservations on a system in which a senior manager was shared between an asset management company and an entity that managed real-estate vehicles that were not regulated by the AMF, despite the fact that the companies had separate teams to search for investment opportunities and had implemented strict procedures prohibiting, among other things, transfers between vehicles managed by the two companies and also governing marketing of the different products. The AMF Board considered that preference should be given to a simple solution that involves appointing different senior managers rather than maintaining a single manager and implementing a conflict of interest management procedure that was cumbersome and could pose risks of less than perfect application. These remarks led the company to modify the system it had initially presented.

In a certain number of files, companies have come to the conclusion that the simplest approach was to merge the various management entities.

b) Investment target origination by the asset management companies

The targets are proposed for sale by other companies in the group that have property development or real estate agency activities

Risks for investors

The risk for the investor is that the investment management company might give preference to the interest of the group over that of the investors in the acquisition by the vehicles it manages of property being sold by the group, and in particular its real-estate agency and property development businesses.

Example:

The group to which the investment management company belongs has companies with real estate agency or property development activities that may propose properties of all kinds and sizes for sale.

The conflict of interest resides in the risk that a collective investment might acquire a property from the said businesses that is over-valued, poorly-located or difficult to sell, or a property that does not exactly fall within the strategy of the fund, to the detriment of the interests of holders of units or shares. The company would thus be serving the interest of the subsidiaries in its group with real-estate agency or property development activities over those of the holders of units or shares in the collective investment.

The AMF considers that these sales must be excluded or governed by strict rules implemented by the asset management company.

These rules require a certain level of diversification of sources in order to ensure that the collective investment does effectively act for the sole benefit of its holders of units or shares without any conflict of interests when it is looking for and acquiring targets.

Except for AIFs open to professional investors, the AMF considers that there is a high risk of non-compliance with these principles when a significant portion of the investments is made in targets proposed for sale by other companies in the same group. Such a situation could lead the AMF to conduct additional due diligence.

Example:

In order to manage conflicts of interest and enable each of the group's activities to be autonomous and independent, the simplest practice is purely and simply to exclude targets arising from these activities from the scope of investment.

Nevertheless, in some files, companies have chosen to retain the option of carrying out this type of transaction. The AMF draws the attention of asset management companies to the fact that they must be able to demonstrate that they have been particularly vigilant if they do want to keep this option. Such companies will have to be able to prove that such transactions were decided on in the interest of the holders of units or shares in the collective investment and that they were conducted on appropriate valuation terms (e.g. valuation by independent experts, disclosure to investors).

In this analysis, the notion of the proportion of targets coming from the group in the assets of the vehicles must also be taken into account. As mentioned above, the AMF considers that if that proportion exceeds 20%, there are serious doubts as to compliance with the principle of the primacy of the interests of the investors. Above this threshold, a detailed conflicts of interest analysis must again be provided in the programme of operations. However, this analysis will take account of the target clients, notably in the case of funds open to professional investors, as the latter are able to apprehend this risk.

Targets coming from other vehicles or mandates managed on behalf of third parties by the asset management company

The risk for the investor is that the asset management company may transfer properties between the vehicles it manages in such a way as to give preference to the interest of one vehicle over that of another.

Example:

It may happen that a collective investment has an urgent need for liquidities, to handle a large redemption, for example. The manager may then find themselves obliged to make a quick sale of a property in their portfolio. They may be tempted, if they do not find a buyer quickly on the market, to have the property acquired by another collective investment managed by the company.

The overriding interest in this type of transaction is not that of the holders of units or shares in the collective investment that is making the purchase, but that of the company that needs to manage a liquidity problem in the collective investment making the sale.

The risk for the investor in this collective investment is that the property may be acquired at a price that exceeds its real value or during a period when the market is weak, or that the property may not exactly correspond to the collective investment strategy in which he/she invested.

The same applies to the transfer of assets not admitted to trading on a regulated market by an asset management company, whether the fund is in the process of being liquidated or not, to other collective investments managed by the company or an entity within its group, or in the management of which it has a direct or indirect interest, systematically raising serious concerns as to the conflicts of interest generated and the valuation conditions chosen.

Recommendation

The AMF recommends that such a situation be avoided.

If this type of transaction is not excluded, however, the AMF considers that the asset management company must implement strict rules to govern this type of transfer while protecting the interests of the holders of units or shares in the collective investment and must justify the transaction by an objective imperative (e.g. end of the lifetime of the fund), monitor it (specific controls) and undertake to comply with professional rules in such matters.

Whatever the case, the AMF will not provide any validation of the procedures relating to these transfers (for example, when updating programmes of operations) or of individual transactions that might be presented to it, as such transactions are the sole responsibility of the asset management company.

c) Target allocation

Risk for investors

The risk for the investors is that the allocation of targets between different vehicles may be performed in an arbitrary manner and give preference to one activity (own account/third party) or one vehicle to the detriment of another.

Examples:

Case 1 – In groups, the search for investment targets is often organised in a concentrated manner with a single team handling the search for all the companies in the group. In such cases, the risk to be avoided is an allocation of targets that favours one company to the detriment of another, with the latter company receiving only the least attractive targets that are left over.

Case 2 – A conflict of interests is also likely to arise when a company manages both “Hoguet Law” mandates, foreign vehicles and collective investments with overlapping activities. Without clearly defined rules for this allocation between the vehicles, there is a risk of arbitrary allocation.

The investment targets must be allocated by a simple process based on clearly identified criteria that are defined as far upstream from the decision as possible.

The implementation of such an investment target allocation process between the companies or the vehicles that are managed must lead the investment management company to adapt its organisation to allow everyone to express, in an entirely independent manner, their intention to submit a bid for the acquisition of a given target when this target falls within the scope of eligible investments.

Where applicable, when the application of the criteria selected for the prior allocation of investment targets does not enable a single investment vehicle to be selected, companies should make provision for a mechanism based on objective criteria that are defined as far in advance as possible to determine which of the vehicles will be authorised to make an offer. For example, this might be a mechanism of rotating allocations between the operators in question, a draw, or an allocation according to the financial capacities of each vehicle, the age of the vehicle or the date limits on the investment periods.

Example:

When the company has its own investment target search team but manages different vehicles that are likely to be interested in the same targets, a target allocation policy based on objective criteria of size, asset type, location or available cashflow must be implemented within the entity.

The company must also implement an arbitrage system in case these criteria are not enough to resolve any possible conflicts of interest.

It is also necessary for the whole of the process to be properly documented and subject to controls at investment management company and group levels, where applicable.

- d) Selection of the service provides supplying a real-estate service

Risks for investors

The risk for the investor is that the company might give preference to the company in the group that provides the services it needs without checking whether that company offers the best value for money.

Example:

The investment management company may handle the property management³⁰ itself or entrust it to a third-party service provider. When it selects a service provider, the company must make sure that it has implemented an objective selection process in order to choose the provider who will supply the service on the best terms for the collective investment.

The company may be tempted to make a direct selection of the company that provides this service within its group. If that is the case, the selection will not genuinely take account of objective selection criteria such as price, expertise, reputation or quality of the service and will be giving preference to the interests of the group to which it belongs.

The AMF considers that the company must implement a service provider selection process based on objective selection criteria and enabling competitive bidding. This procedure must also provide for periodic reassessment of the services provided (at least annually). Clear, detailed information must be provided to the investors, particularly when a service provider from within the same group is selected.

Example:

It may also happen that the choice of a service provider within the group is simpler, notably for reasons of compatibility of the software that is used. However, the company is obliged to check periodically that the services provided by the company within the group are of good quality and that they are provided on market terms.

- e) Independence of the investment decision

Risks for investors

The risk for investors who do not hold a significant proportion of the assets in the collective investment is that the company may be influenced in its investment decisions by an investor who does hold a significant proportion of the assets in the collective investment.

Example:

The organisation implemented by the company for investment decisions must be such as to avoid bringing the autonomy of its management into question.

In a collective investment scheme, several categories of investors may be represented and, in particular, investors such as entities belonging to the asset management company's group, institutional investors or individual investors may be present in the same fund. Even if the company does remain independent in its management, an advisory committee is sometimes set up to collect the opinions of the investors on a target that is being considered. The opinion of this committee is always advisory and the company is not bound by the opinions that are expressed, but its decision may be influenced. In such situations, the risk is that the interest of those persons with a strong level of representation within the committee may be contrary to those of the persons with less representation.

It may also happen that an investor with considerable influence in terms of its assets under management might itself propose an investment for the collective investment. In such cases, in order to avoid a conflict of interests, companies are reminded that all investment targets must follow the same selection and approval process within the investment management company as any other opportunity.

Pursuant to Articles L. 214-9 and L. 214-24-3 of the Monetary and Financial Code, the company must ensure that it remains totally independent in its investment decision making.

Example:

³⁰ This is the activity of managing and enhancing the property assets, the expression being more widely used in real estate.

There are serious doubts as to compliance with the principle of fair treatment of the holders of units or shares when an advisory committee is set up, in which the (main) shareholders are represented, or when a person representing the group or the main investors takes part in the management committee (the committee which makes the management decisions), even if this person only gives an opinion or the persons present have only an advisory role. In such situations, the company must show great vigilance towards this set-up.

For collective investments open to professional investors, the AMF may adopt a more flexible position provided that appropriate information is disclosed to the investors, as the clients of this type of investment are more able to defend their interests themselves. However, the principle of autonomous and independent management must be complied with in all cases.

3.2.9.3 Personal transactions

You are reminded that:

- Managers of UCITS or AIFs may subscribe to shares in the funds they manage. In this case, they are subject to the provisions on declaration and, where applicable, prohibition in the cases set out in Article 321-43 of the AMF General Regulation or in Article 63 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012;
- natural persons who are salaried employees of a company under a delegation arrangement with the asset management company are relevant persons within the meaning of Article 321-31 II 5° of the AMF General Regulation and Article 1 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012. For example, the employees of the valuer are relevant persons in that they take part in the accounts management of the UCITS or AIF by delegation.
However, it is the responsibility of the asset management company to determine, among such persons, those that are subject to the personal transaction identification system and, where applicable, those barred from such transactions because they play a part in activities that are likely to give rise to conflicts of interest or because they have access to inside or confidential information about clients, pursuant to the provisions of Article 321-43 of the AMF General Regulation or Article 63 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012

3.2.10. Anti-money laundering and counter-terrorist financing and combating tax evasion and fraud

(Section 2.J of the programme of operations)

Section 2.J of the programme of operations is not intended to describe the entire system that the asset management company intends to put in place concerning anti-money laundering and the financing of terrorism, but must help to understand the organisation, the measures for assessing and managing the risks involved as well as the monitoring process implemented to detect any suspicious transactions and report to TRACFIN as soon as the company knows, suspects or has good reasons to suspect that a transaction is linked to money laundering, terrorist financing or tax fraud.

The programme of operations must therefore focus on the salient points of the legislative and regulatory framework, in accordance with Articles 320-14 et seq. or 321-141 et seq. of the AMF General Regulation:

- designate a manager responsible for anti-money laundering and terrorist financing;
- identify a TRACFIN correspondent and declarant.³¹ Any change in incumbent must be notified immediately to the AMF;
- contain a categorisation of the risks of money laundering and terrorist financing to which the management company is exposed, assessed in particular according to the nature of the products and services offered, the

³¹ It is also the responsibility of the asset management company to communicate their identity to TRACFIN.

transaction conditions proposed, the distribution channels used, the characteristics of the clients and the country or territory of origin or destination of the fund. This categorisation of risks must associate levels of vigilance with the levels of risk identified and needs to be scalable (using procedures to be confirmed) to ensure the most effective system possible;

- list the formalised procedures that the asset management company will implement (if necessary, operational, internal controls and reporting of suspicious transactions to TRACFIN) pursuant to the legislative and regulatory provisions in force;
- specify methods for regularly disclosing information and the training provided by the asset management company to make persons acting on its behalf aware of its obligations in anti-money laundering and the financing of terrorism.

The AMF has clarified certain provisions in its General Regulation on anti-money laundering and combating the financing of terrorism in its policy documents:

- Position DOC-2019-14 – Guidelines on risk factors, incorporating the common guidelines of European supervisory authorities;
- Position-Recommendation DOC-2019-15 – Guidelines on the risk-based approach to combating money laundering and terrorist financing;
- Position DOC-2019-16 – Guidelines on due diligence obligations with respect to clients and their beneficial owners;
- Position DOC-2019-17 – Guidelines on the concept of Politically Exposed Persons;
- Position DOC-2019-18 – Guidelines on the obligation to report to TRACFIN.

Section 2.J of the programme of operations also details:

- the use of third-party introductions, where applicable, and
- the internal control system designed specifically to ensure the implementation and proper application of internal procedures for complying with the identification and reporting requirements laid down in Article 1649 AC of the General Tax Code and the obligation laid down in Article L. 564-1 of the Monetary and Financial Code.

3.2.11. Record keeping and archiving

(Section 2.C “Technical resources” of the programme of operations)

Record keeping and archiving

The programme of operations shall describe the computer equipment, sources of information and software being considered, as well as the IT security tools (access to data and systems, network security, audit trails, backups etc.) in light of the security objectives mentioned in Articles 321-24 and 321-25 of the AMF General Regulation and in Article 57 (2) and (3) of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012. The IT security procedures shall be made available to the AMF.

The record-keeping and data storage methods used in compliance with Articles 321-69 to 321-74 of the AMF General Regulation, in Regulation (EC) 1287/2006 of 10 August 2006 and in Articles 64 to 66 of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 must also be indicated and, for the provision of investment services, those defined in Articles 72 et seq. of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

Recommendation

The AMF recommends that asset management companies put in place procedures and measures to enable them to retain a record of promotional communication made in non-durable formats, such as social media, when this is deemed necessary due to the type of information communicated and, notably, to enable the asset management company to handle any complaints or disputes that may arise. This archiving must be performed in accordance with legal and regulatory provisions in force relating to storing data.

If archiving is offered by the social media provider, the asset management company may use said archiving service as long as it is satisfied that the process used meets the company's requirements and is in accordance with legal and regulatory provisions in force.

The AMF also recommends that a long-term, permanent policy governing archiving is adopted.

The programme of operations must also briefly describe the company's business continuity plan and cybersecurity measures.

3.2.12. Asset management company premises

(Section 2.C "Technical resources" of the programme of operations)

An asset management company shall have its registered office in France and must have independent premises. The programme of operations (section 2.C point 4) shall indicate the premises in which it conducts its business. If the asset management company is not the owner, the agreement under which the premises are to be used shall be attached to the authorisation application.

Recommendation

The AMF recommends that the lease agreement be for a minimum of 12 months and include a clause with a minimum notice period of three months. If this is not the case, the company must justify the additional operational risk associated with the terms of the agreement.

The programme of operations shall specify, where necessary, the identity and activity of the company with which it shares premises and the steps taken by the asset management company to guarantee the confidentiality of its activities, to ensure its independence and to prevent any risk of conflicts.

The asset management company shall describe the arrangements put in place for working from home, where applicable.

3.2.13. Remuneration policy

(Section 2.K of the programme of operations)

When the asset management company is subject to the UCITS Directive and/or fully subject to the AIFM Directive, section 2.K of the programme of operations shall summarise the employee remuneration policy broken down into the type of roles carried out (senior managers, managers, control function managers). Please refer to the guides and professional codes in this matter.

4. MARKETING OF PRODUCTS AND SALES POLICY

(Section 2.L of the programme of operations)

In accordance with AMF position DOC-2014-04 ("Guide to UCITS, AIF and other investment fund marketing regimes in France"), the act of marketing units or shares of UCITS or AIFs in France consists of presenting them within France by different means (advertising, direct marketing, advice etc.) with a view to encouraging an client to subscribe to or purchase them.

This position also explains those situations that are not deemed to constitute an act of marketing in France.

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

It follows from this definition that the marketing of UCITS or of AIFs may lead the asset management company to provide investment services, for example, investment advice and/or receiving and transmitting orders for third parties.³²

The asset management company may market collective investments that it manages or those managed by another asset management company after characterizing the investment services that will be provided within the framework of this marketing, and request authorisation for this purpose in accordance with Article L. 532-9 of the Monetary and Financial Code and under the conditions of AMF instruction DOC-2008-04 pursuant to section I of Articles 411-129 and 421-26 of the AMF General Regulation. Furthermore, it can market the collective investments that it manages or those managed by another asset management company using the direct marketing of financial or banking services, in accordance with the provisions of Articles L. 341-1 et seq. of the Monetary and Financial Code.

Section 2.L of the programme of operations must describe the marketing policy chosen by the asset management company in a general way.

You are also reminded that the financial instrument governance regime defines the respective responsibilities of producers and distributors (target market, distribution strategy, etc.)³³ in the distribution of financial instruments.

4.1. Marketing of products by the asset management company

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

Recommendation

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

The asset management company shall specify in particular, for each of its products:

- concerning the clients (in the case of direct marketing by the asset management company):
 1. the target clients: general public, professional client or equivalent,³⁴ etc.;
 2. the origin of these clients: professional network, group network, direct financial or banking marketing, platform financial investment advisor, etc.;
 3. the documentation sent to the client and arrangements to follow this up: regularity of items sent, validation of documentation, etc.
- concerning the distributors of these financial instruments (in the case of marketing through intermediaries):

³² Services referred to respectively in Article L. 321-1 (5) and (1) of the Monetary and Financial Code.

³³ Articles L. 533-24 and L. 533-24-1 and Articles 313-1 et seq. of the AMF General Regulation. See also Position DOC-2018-04 on product governance requirements under MiFID II.

³⁴ Here, in the sense that they are eligible for the underwriting or for the acquisition of shares in funds that are open to professional investors (see the related Articles and amendments in Book IV of the AMF General Regulation).

1. the distribution channels and status of the distributors: tied agents, asset management companies, financial investment advisers, direct banking or financial marketers, etc.;
2. the type of contract entered into by the asset management company and distributors (distribution agreement, direct banking or financial marketing agreement, etc.);
3. their means of remuneration (rebates on management fees, rebate per transaction etc.);
4. the arrangements for monitoring distributors (agreements, commercial documents where applicable, etc.).

When the asset management company manages funds banned from sale in France, it must state the measures taken to respect this ban.

When the asset management company uses financial investment advisers (“FIAs”) to distribute its products, they are reminded that AMF Position-Recommendation DOC-2006-23 – Questions and answers on the rules that apply to financial investment advisers – clarifies the other regulated activities that the FIAs may carry out.

In this document, the AMF indicates that, while FIA status does not in principle exclude other regulated activities, if the same professional were to combine FIA status with the regime for direct marketing of banking or financial services to the same client and for the same service, it would be very difficult for the targeted investor to understand which regime applied to him/her.

This situation is justified by the need for the investor to have a clear understanding of the legal relationship that unites them with the distributor and the consequences in terms of responsibility.

This position does not prevent an asset management company from appointing, as a direct marketer of banking and financial services, a distributor who also has FIA status. Nevertheless, to comply with the aforementioned situation, the legal framework within which the distributor is operating when providing the same service to a client must be clear: when providing this service, either the distributor will operate solely as a direct marketer on behalf of the asset management company, or solely as an FIA.

Furthermore, if the asset management company does not wish to appoint its FIA distributors as direct marketers of financial or banking services, the agreement must not be ambiguous about the fact that it is not a mandate for direct marketing. The FIA may not market their own advisory services to clients directly.

The AMF may require communication of the management mandate form(s) offered to clients of the asset management company. It may modify the presentation or content of draft mandates if the latter do not comply in particular with the provisions of Article 58 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 or, for retail clients, of Article 314-11 of the AMF General Regulation, as specified in AMF Instruction-Position-Recommendation DOC-2019-12.

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

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

1. the target clients: general public, professional client or equivalent,³⁵ etc.;
2. the origin of these clients: professional network, group network, direct financial or banking marketing, platform financial investment advisor, etc.;
3. the documentation sent to the client and arrangements to follow this up: regularity of items sent, validation of documentation, etc.;

³⁵ Here, in the sense that they are eligible for the underwriting or for the acquisition of shares in funds that are open to professional investors (see the related Articles and amendments in Book IV of the AMF General Regulation).

4. the type of agreement entered into between the asset management company and the manufacturer of the marketed products and the remuneration methods as a distributor.

4.3. Conduct of business rules

When the asset management company is required to provide one or more investment services to the investor, it must comply with the conduct of business rules applicable to investment services providers falling within the scope of Title I of Book III of the AMF General Regulation.³⁶ These rules are set out in Title I of Book III of the AMF General Regulation and in Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

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

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

Verifying the identity and legal capacity of a new client

Pursuant to Article D. 533-5 of the Monetary and Financial Code, when dealing with new professional or retail clients, the asset management company is required to verify their identity, in accordance with legal and regulatory provisions on anti-money laundering and combating terrorist financing.

Where the client has appointed someone to act on its behalf, or where it is appointed by a third party to act on the latter's behalf, the asset management company shall collect the document attesting to that appointment.

Client categorisation

Asset management companies are reminded that they are required to categorise their existing or potential clients to whom it provides an investment service of investment advice, third-party portfolio management or reception and transmission of orders for third parties or a service of receiving and handling orders within the meaning of AMF Instruction DOC-2008-04. It is not required, however, to categorise the holders of the UCITS or AIFs it manages if it has not provided them with such a service.

Within the framework of marketing units or shares of UCITS or AIFs, in regard to the categorisation of its clients, the asset management company must comply with the provisions of Articles L. 533-16 and D. 533-4 et seq. of the Monetary and Financial Code and of AMF Instruction DOC-2008-04. The AMF reiterates that an asset management company (or, more generally, an investment services provider) cannot take the initiative of treating a retail client like a professional client without complying with the criteria and procedures referred to in Articles D. 533-12 and D. 533-12-1 of the Monetary and Financial Code.

See also Article 45 of Commission Delegated Regulation (EU) 2017/565 of the Commission of 25 April 2016.

The programme of operations shall identify the person or persons in charge of client categorisation and their assessment.

The programme of operations must also detail:

- key information allow you to assess the client (suitability/appropriateness);

³⁶ By reference to Articles 316-2 IV and 321-1 III of the AMF General Regulation.

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

5. INTERNATIONAL POSITIONING

(Section 2.M of the programme of operations)

Section 2.M of the programme of operations must detail the asset management company's European and/or international strategy (activities outside of France).

Once authorisation has been received, if it wishes, the asset management company may use the passporting procedure defined in AMF Instruction DOC-2008-03 to carry out activities under the freedom to provide services and free establishment in another Member State of the European Union or in another State party to the agreement on the European Economic Area.

Management authorisation form (Section A of the authorisation table)	UCITS Directive	AIFM Directive
Authorised activity via a passport		
UCITS Management ³⁷	X	
AIF Management ³⁸		X
Third-party portfolio management	X	X
Investment advice	X	X
Reception and transmission of orders		X

A company may only receive a passport for services or activities for which it has authorisation and only pursuant to the directive to which it is subject.

For example, an asset management company managing UCITS may seek to benefit from the mutual recognition of its authorisation by the UCITS directive, for the purpose of carrying out, under free provision of services or free establishment, the following activities:

- UCITS management authorised on the basis of directive 2009/65/EC including portfolio management, administration and marketing functions;
- third-party portfolio management;
- investment advice;
- the custodianship and administration of CIU units.³⁹

³⁷ UCITS management within the meaning of Directive 2009/65/EC including portfolio management, administration and marketing functions. A company authorised to manage UCITS may also apply for a passport for custodianship and administration of UCITS (keeping the list of unit or shareholders in their UCITS).

³⁸ AIF management within the meaning of Directive 2011/61/EU including portfolio management and risk management functions.

³⁹ Asset management companies are not authorised to be asset depositories but are authorised to keep the list units or shareholders in their UCITS.

However, an asset management company managing an AIF without being fully compliant with the AIFM Directive may only receive the passport that this directive offers (AIF management, third-party portfolio management, investment advice etc.).

As a reminder, the AMF does not require an asset management company to have a passport to manage a foreign UCITS or AIF by delegation to another management company.⁴⁰

6. CAPITAL AND OTHER FINANCIAL ITEMS

(Section 2.N of the programme of operations)

The following items will be updated in the near future in line with the provisions of Regulation (EU) 2019/2033 and of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 June 2019.

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

Information on the following items should be provided: third-party portfolio management commissions, UCITS/AIF management commissions, turnover commissions, UCITS/AIF subscription and/or redemption commissions, rebates on UCITS/AIF management fees and income related to ancillary activities.

However, the projected accounts must not include performance fees. The asset management company must have accounting procedures in place allowing it to provide timely and appropriate financial information to the AMF, in accordance with the provisions of Article 321-26 of the AMF General Regulation and in Article 57 (4) of Commission Delegated Regulation (EU) 231/2013 of 19 December 2012.

6.1. Assumptions made

Assumptions must be robust, accurate and based on realistic forecasts. They must be detailed under point 5 of section 2.N of the programme of operations.

The asset management company must provide any information tending to show that the assumptions are reasonable and plausible: letters of intent, for example, are important items.

The asset management company is required to include in this information an indication of how it intends to operate in the start-up period and how, in the absence of a sufficient level of assets, it intends to maintain its capital at least equal to the minimum capital requirement.

In the absence of this information, the asset management company will have to increase its capital to cover start-up activities.

Asset management companies must complete the projected accounts table in point 5 of section 2.N of the programme of operations provided in appendix II of AMF Instruction DOC-2008-03.

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

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

6.2. Capital

Note: This section will be updated in the near future in line with recent and ongoing changes to regulations.

Important note

European Regulation (EU) 575/2013 of the European Parliament and Council of 26 June 2013 (“the CRR”), in effect since 1 January 2014 and amended by European Regulation (EU) 2019/876 of the European Parliament and the Council of 20 May 2019, is the European reference, by reference from the UCITS and AIFM Directives, for asset management companies in relation to their qualitative capital requirements⁴¹ and calculating their fixed overheads.⁴² It is supplemented by numerous delegated acts.⁴³ Prudential in origin, the new requirements can be far more complex than the accounts of most asset management companies under French law. The AMF has therefore decided to provide a non-exhaustive but informative overview of the major principles in the CRR. This means that the provisions described under point 6.2.1 concerning fixed overheads and under 6.2.2 are not AMF policy (unless explicitly stated) but illustrations of the requirements that apply to asset management companies. Asset management companies should therefore refer to the CRR itself, which is directly applicable. Point 6.2.3 explains the ways capital should be invested in accordance with Articles 317-3 and 321-11 of the AMF General Regulation, and includes elements of policy.

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

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

The AMF also reminds asset management companies that in order to comply at all times with their minimum capital requirements, they must all have a procedure that is suited to their situation and governs all the aspects of capital calculation and monitoring (particularly regarding the frequency of such monitoring). Compliance with capital requirements (in terms of level and investment) implies monitoring activity at appropriate intervals, notably at ex-dividend date or when variable bonuses are paid to personnel. In regulatory terms, the fixed overheads used to estimate the required capital must be based on data that has been certified by official auditors.⁴⁴ However, any simulation calculation may be made based on unverified interim accounting data or data from cost accounting.

Asset management companies are subject to two types of capital requirements:

- **quantitative requirements**, represented by a minimum level of capital and own funds (point 6.2.1);
- **qualitative requirements** concerning the nature and characteristics of capital instruments (point 6.2.2) and the investment of capital (point 6.2.3).

⁴¹ Articles 25 to 88 of the CRR.

⁴² Article 97 of the CRR.

⁴³ Including Commission Delegated Regulation 241/2014 of 7 January 2014.

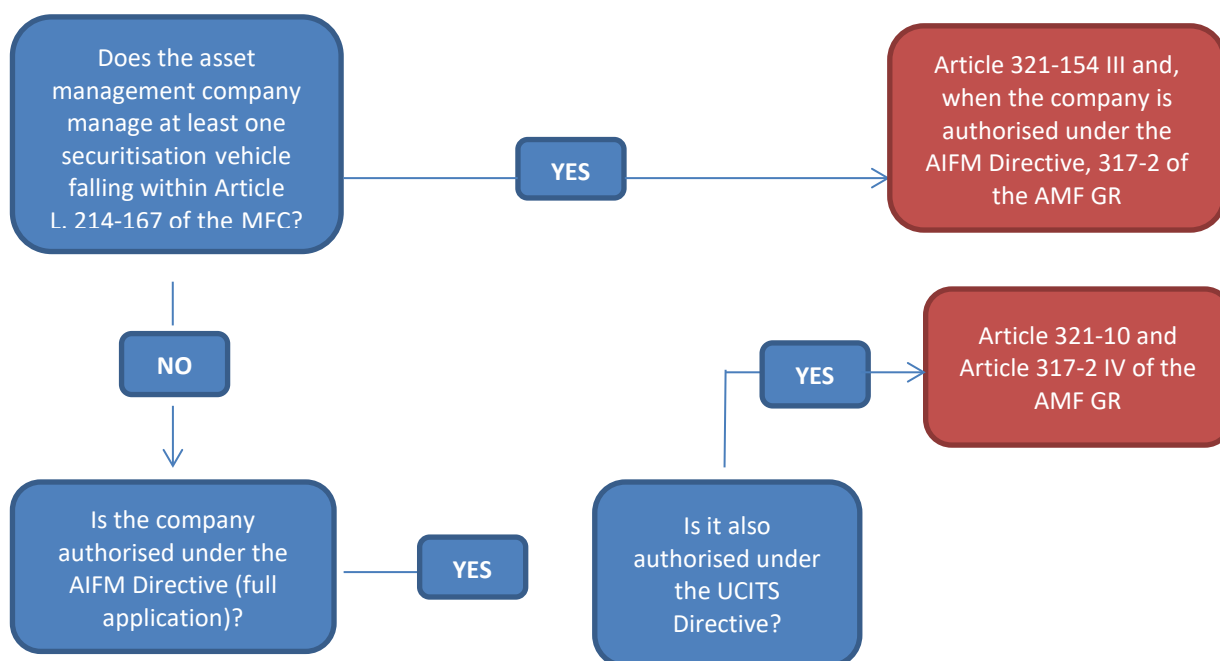
⁴⁴ Article 34b of Commission Delegated Regulation (EU) 241/2014 of 7 January 2014 and Articles 317-2, 321-10 and 321-154 of the AMF General Regulation.

6.2.1. Minimum levels of capital and own funds

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

In national law, they are covered in Articles 317-2, 321-10 and 321-154 III of the AMF General Regulation.

Determining the source of applicable law on minimum capital requirements



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

Summary of minimum regulatory requirements relating to initial capital and own funds¹

Capital initial : 125 000 euros minimum

Regulatory minimum capital threshold

General regime

THE HIGHEST OF THE FOLLOWING:

€125,000 supplemented, when the net value of managed portfolios excluding mandates exceeds €250 million, by additional capital of $0.02\% \times (\text{net value of } \textit{portfolios managed excluding mandates}^* - €250 \text{ million})$

The quantitative requirement corresponding to this amount is capped at €10 million.

A quarter of overheads in the previous year

*Portfolios

managed excluding mandates: collective investments under French or foreign law, excluding leverage:

- a) In the form of a company which has delegated overall management of its portfolio to an asset management company;
- b) In the form of a fund managed by the asset management company, including portfolios for which it has delegated management but excluding portfolios it manages by delegation.

Assets under management corresponding to the investment, on behalf of the managed collective investments, in other in-house collective investments are not taken into account here.²

+

For asset management companies authorised under the AIFM Directive

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

Covering professional liability risks – two possible methods:

Method 1: Additional capital

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

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

**Value of managed AIF portfolios*: the absolute value of all the assets held by all the AIFs managed by the company, including assets acquired through leverage (derivative instruments are valued at their market price). Assets under management corresponding to the investment, on behalf of the managed AIFs, in other in-house AIFs, are not taken into account here.²

Method 2: Professional indemnity insurance

This must comply with the terms of Article 15 of Delegated Regulation (EU) 231/2013 and be adapted to the risks covered on the basis of the asset management company's liability for professional negligence, and must cover all the risks listed in Article 12 of the Delegated Regulation of 19 December 2012.

¹ The asset management companies of securitisation vehicles referred to in Article L. 214-167 I of the Monetary and Financial Code are subject to the minimum capital requirements defined in Article 321-154 III of the AMF General Regulation, without prejudice to the rules applicable to AIF management entirely subject to the AIFM Directive.

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

Examples

Example 1

Asset management company A is authorised to provide **asset management services for third parties (discretionary mandates) and to manage UCITS**. It manages 10 individual portfolios with total assets under management of €500 million as well as 3 UCITS with total assets of €350 million.

The minimum capital requirement at 31/12/N = the higher of:

- 125,000 + 0.02% x (350 million - 250 million), i.e. €145,000
- a quarter of overheads in the previous year

The minimum capital requirement at 31/12/N = the higher of:

- 125,000 + 0.02% x (350 million - 250 million), i.e. €145,000
- a quarter of overheads in the previous year

Example 2

In addition to its authorisation to provide third-party asset management services (discretionary mandates) and to manage UCITS, asset management company A obtains **authorisation under the AIFM Directive (full scope)**. It now manages 10 individual portfolios with total assets under management of €500 million, 3 UCITS with total assets of €350 million and 8 AIFs with total assets of €600 million. The value of the managed AIF portfolios, including leverage, is €900 million.

The minimum capital requirement at 31/12/N = the higher of:

- 125,000 + 0.02% x (350 million + 600 million - 250 million), i.e. €265,000
- a quarter of overheads in the previous year
- + additional capital of at least 0.01% of the portfolios of the managed AIFs: 0.01% x 900 million, i.e. €90,000 minimum
- or professional indemnity insurance

Example 3

Asset management company B is **authorised to manage UCITS** and is seeking to **manage AIFs with total assets below the thresholds set in the AIFM Directive (lighter regime)**. It manages 3 individual portfolios with total assets under management of €350 million as well as 5 AIFs with total assets of €100 million.

The minimum capital requirement at 31/12/N = the higher of:

- $125,000 + 0.02\% \times (350 \text{ million} + 100 \text{ million} - 250 \text{ million})$, i.e. €165,000
- a quarter of overheads in the previous year

Additional capital

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

Article 317-2 IV of the AMF General Regulation states that an asset management company's additional capital must be "*sufficient to cover potential liability risks arising from professional negligence*". The 0.01% referred to in Paragraph 2 of Article 14 of the Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 in this regard should be considered a minimum rate. In accordance with the above-mentioned provisions, the rate actually retained by the asset management company must result from its own analysis of the risks it faces and how they are quantified. The amount defined in this way must correspond to the risks borne and must be of a sufficient level to allow any necessary remedial measures to be taken (e.g. cover at least procedural legal costs). The analysis must be formalised and the assumptions justified and documented.

Fixed overheads

The determination of the fixed overheads used in the minimum capital requirement calculation is governed by Articles 34b to 34d of Commission Delegated Regulation (EU) 241/2014 of 7 January 2014 ("the Delegated Regulation"), which clarify the provisions of Article 97 of the CRR.

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

(Article 34 b of the Delegated Regulation) The determination of fixed overheads for the previous year may be summarised as follows:

- Total expenses after the distribution of profits to shareholders as described in the most recent audited financial statements

Minus such items as the following:

- fully discretionary bonuses paid to staff, managers and/or partners
- any other share in profits and any other entirely discretionary variable compensation
- shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue, and where the payment of the commission and fees payable is contingent upon the actual receipt of the commission and fees receivable
- fees, brokerage and other charges paid to clearing houses, exchanges and intermediate brokers for the purposes of executing, registering or clearing transactions

- remuneration paid to tied agents⁴⁵
- any non-recurring expenses from non-ordinary activities

The following is added to this amount:

- 35% of compensation relating to tied agents

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

Example:

Fees relating to the delegation of management may not be deducted from the fixed overheads as they would be normally be incurred by the asset management company in the absence of delegation.

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

Article 34c of the delegated regulation specifies the conditions for the adjustment of a quarter of fixed overheads when the asset management company's business changes materially. Recourse to this facility is subject to authorisation by the AMF.⁴⁶

6.2.2. Qualitative requirements concerning the nature and characteristics of capital instruments

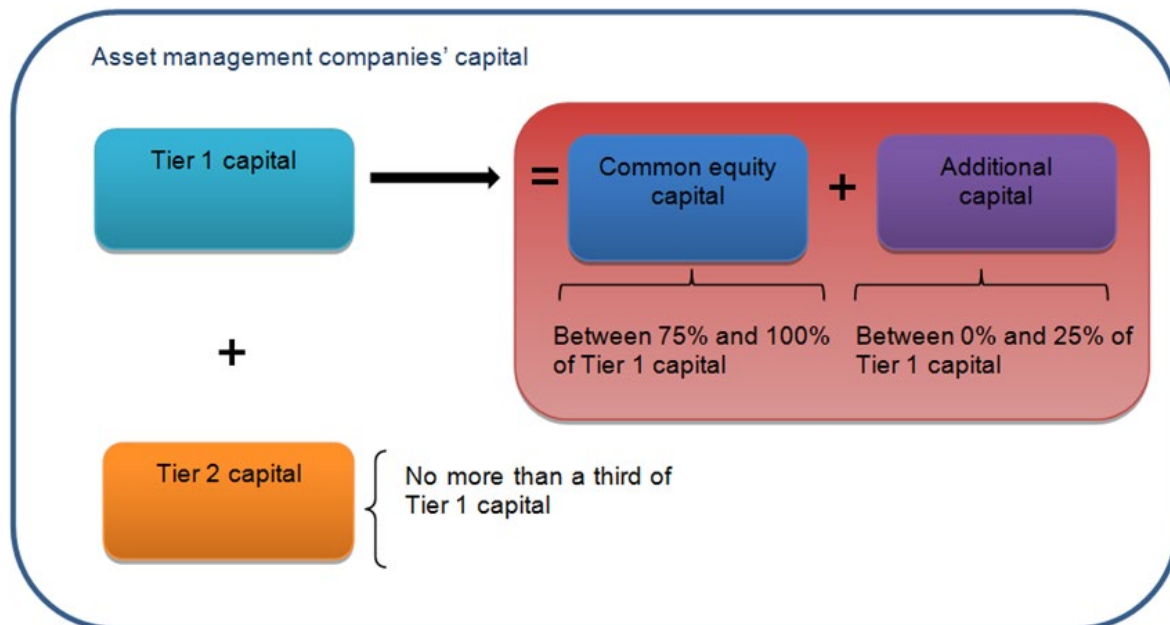
Articles 25 to 88 of the CRR govern the Tier 1 and Tier 2 capital composition and eligibility criteria for asset management companies.

An asset management company's capital is the sum of its Tier 1 and Tier 2 capital.⁴⁷

⁴⁵ The concept of a tied agent is defined in Article 4 (29) of Directive 2014/65/EU.

⁴⁶ In accordance with the provisions of Article 97(2) of the Capital Requirements Regulation (CRR), the adjustment of the capital requirements based on fixed overheads is subject to the power of the competent authority.

⁴⁷ See Article 72 of the CRR.



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

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

Composition (*Articles 26 and 27 of the CRR*): for asset management companies, Common Equity Tier 1 capital ("CET1") consists of the following:

- Capital instruments meeting the criteria listed in Articles 28 or 29 of the CRR

Capital instruments eligible for CET1 correspond to equity type instruments.

For example, asset management company A issues fully paid-up preference shares without voting rights but with the right to a preference dividend whose payment is not a disproportionate drain on capital.

- issue premium accounts related to the above instruments
- non-distributed profits from the previous financial year, net of tax
- reserves
- retained earnings
- profits from the current financial year, subject to the conditions listed in Article 26 (2) of the CRR

(*Article 36 of the CRR*) From which the following are deducted:

- losses for the current financial year
- the non-called up portion of capital
- the dividend amount for the previous year which the asset management company has decided to distribute during the financial year on the date of the general meeting ruling on the company's financial statements
- deferred tax assets that rely on future profitability⁴⁸
- defined benefit pension fund assets held on the asset management company's balance sheet⁴⁹

⁴⁸ See Article 38 of the CRR.

⁴⁹ See Article 41 of the CRR.

- intangible assets⁵⁰
 - the asset management company's holdings of its own shares within its CET1⁵¹
 - the applicable amount of the asset management company's holdings in financial sector entities' CET1 instruments⁵²
 - the sum of the items that have to be deducted from the additional capital amount (see point ii below) and that exceeds the asset management company's total additional capital.
- For example, if the sum of capital instruments and associated share premiums comprising additional capital equals 100 and the total deducted amount is larger at 120, the amount of additional capital is reduced to zero and the remaining deductible portion, i.e. 20, is cut from the CET1 total.

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

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

Composition (*Article 51 of the CRR*): asset management companies' additional Tier 1 capital ("AT1") comprises the following:

- Capital instruments meeting the criteria listed in Articles 52 to 54 of the CRR.
- Instruments eligible as AT1 capital correspond to contingent convertible type bonds.*
- For example, an asset management company A issues a fully paid-up, perpetual contingent convertible bond that can be converted into a CET1 item if a trigger event materialises.
- Issue premium accounts related to the above instruments.

(*Article 56 of the CRR*) From which the following are deducted:

- The asset management company's holdings of its own AT1 instruments.⁵³
 - The applicable amount of the asset management company's holdings in AT1 instruments of financial sector entities.⁵⁴
 - The sum of items deducted from Tier 2 capital (see point b below) that exceeds the asset management company's total Tier 2 capital.
- For example, if the sum of capital instruments and associated share premiums comprising additional capital equals 500 and the total deducted amount is larger at 600, the amount of additional capital is reduced to zero and the remaining deductible portion, i.e. 100, is cut from the CET1 total.

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

Composition (*Article 62 of the CRR*): asset management companies' Tier 2 capital ("T2") comprises the following:

- Capital instruments and subordinated loans meeting the criteria listed in Articles 63 of the CRR.
- Instruments eligible for T2 correspond to subordinated debt instruments.*
- For example, an asset management company A issues a fully paid-up subordinated bond with an initial maturity longer than five years.
- Issue premium accounts related to the above instruments.

⁵⁰ See Article 37 of the CRR.

⁵¹ See Article 42 of the CRR.

⁵² See Articles 43 to 48 of the CRR.

⁵³ See Article 57 of the CRR.

⁵⁴ See Articles 58 to 60 of the CRR.

(Article 66 of the CRR) From which the following are deducted:

- The asset management company's holdings of its own T2 instruments.⁵⁵
- The asset management company's holdings of financial sector entities' T2 instruments.⁵⁶

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

The AMF considers that:

- An asset management company's CET1 capital should represent at least 75% of its Tier 1 capital.⁵⁷
- An asset management company's Tier 2 capital should not represent more than a third of its Tier 1 capital.⁵⁸

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

Asset management companies' capital consists of the two following sub-categories:

- **regulatory capital**, whose value corresponds to the regulatory minimum requirement;
- **surplus capital**, corresponding to the value exceeding the regulatory minimum requirement.

Example: Asset management company A has capital of €500,000 and a regulatory minimum requirement of €300,000. The difference between its capital and the regulatory minimum requirement is its surplus capital of €200,000 (€500,000-€300,000).

a) Investing regulatory capital

Article 321-11 I of the AMF General Regulation governs the investment of the regulatory capital of asset management companies subject to Title Ib and Title Ic of Book III of the AMF General Regulation: *"The company's capital, including additional capital, must be invested in liquid assets or assets that can easily be converted into cash in the short term and that do not include speculative positions"*.

Article 317-3 I of the AMF General Regulation governs the investment of the regulatory capital of asset management companies subject to Title Ia of Book III of the AMF General Regulation: As additional capital within the meaning of the AIFM directive constitutes part of regulatory capital, it should also be invested in assets complying with the provisions of Article 317-3 I of the AMF General Regulation.

The AMF considers that the instruments that are eligible de facto as regulatory capital (and, where applicable, for the ratio of 130% of regulatory capital defined below) are money market funds in euros, liquidities and liquidity equivalents and three-month term deposits in euros. Receivables held on funds managed by the asset management company may also be considered eligible, provided that they are only fixed management commissions or commissions for a quarter for which provision has been made by the fund, for which the fund has the necessary liquidities and which the asset management company has not waived, as may receivables held against the French State for VAT (but not for corporation tax).

⁵⁵ See Article 67 of the CRR.

⁵⁶ See Articles 68 to 70 of the CRR.

⁵⁷ AMF position derived from the requirements of Article 92 of the CRR.

⁵⁸ AMF position derived from the requirements of Article 4 (1) (71) of the CRR.

The eligibility of other types of instruments must be the subject of a documented analysis demonstrating the liquid and non-speculative nature of the investments. For example, the following are not considered eligible by the AMF:

- Shares of carried interest (whatever the reason and duration of the investment, including pending allocation of such sums to financial managers);
- Financial instruments that do not have a high credit quality (as assessed by the management company) and which cannot be disposed of within a period of 3 months. An analysis supported by evidence must attest to credit quality, based on recent data and on the ability of the debtor to repay within a period of three months;
- Any receivables held against managed funds other than management fees due by the fund(s) for one quarter or any such receivables that do not meet the conditions referred to above;
- Equities and other equity securities;
- Instruments with leverage (including, by transparency, any funds holding such instruments);
- Any funds using excluded securities referred to above (notably debt securities that are not rated or do not have a high credit quality), even if the investment is made in such funds as seed money.

These instruments that are not eligible as regulatory capital (nor for the 130% of regulatory capital) must therefore be considered, where applicable, as part of surplus capital.

It should also be noted that centralised cash management within a group or cash pooling⁵⁹ are prohibited in respect of regulatory capital.

Acceptance of a cash pooling format for the additional portion shall also require the asset management company to follow all of the following general principles:

- The establishment of a reserve of additional capital allowing the company, if necessary, to not draw upon the minimum capital to cover the needs inherent in its activity (a change in the level of capital linked to an increase in overheads, litigation, operating expenses etc.). It remains the responsibility of the asset management company to define this minimum amount in relation to its estimated needs.
- The immediate availability upon first request, initiated by the management company, of an amount equivalent to the sums placed within cash pooling;
- A precise identification of investment methods expressly indicating exclusions (financial futures instruments, etc.);
- The integration into the monitoring programme of an investment methods review for capital made available within the framework of cash pooling.

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

b) Investing surplus capital

In accordance with Article 321-11 II of the AMF General Regulation, *“When capital is more than 130% greater than the regulatory minimum requirement mentioned in Article 321-10, the portion exceeding this amount may be invested in assets that do not comply with the provisions of I, so long as these assets do not create a material risk to regulatory capital”*.

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

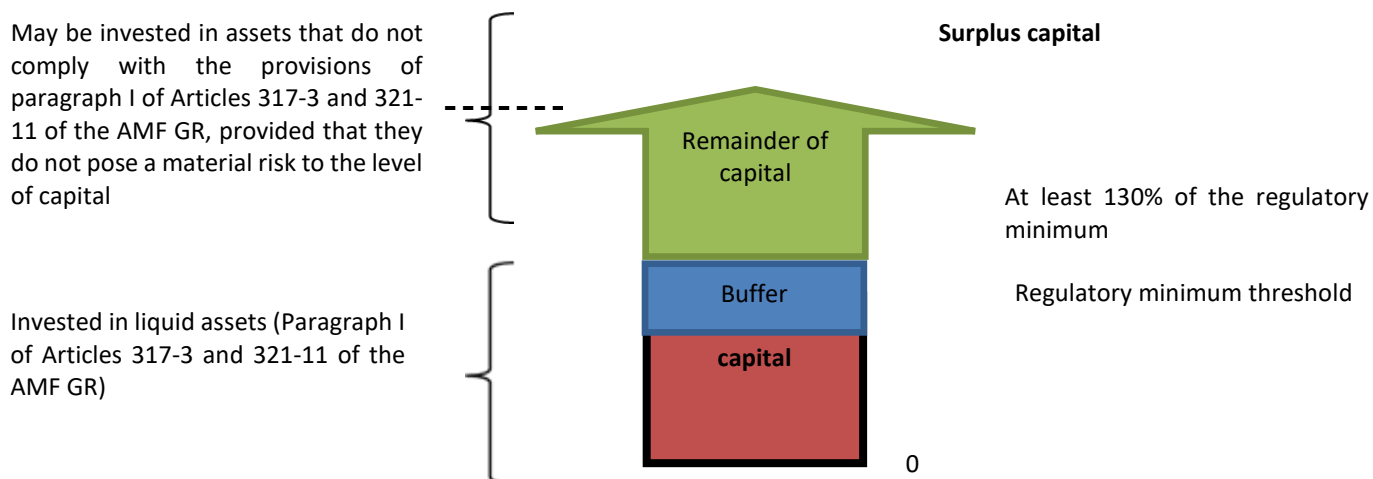
- In respect of its surplus capital, the asset management company first constitutes a capital buffer invested in assets that meet the requirements of paragraph I of Articles 317-3 and 321-11 of the AMF General Regulation. The

⁵⁹ Cash pooling consists of aggregating the cash of a group's companies in a single bank account, typically that of a holding company. The other bank accounts in the pool are regularly credited or debited via this centralising account.

buffer's value must be appropriate to the asset management company's business and the risks it bears, but must never be less than 30% of the value of its regulatory capital;

- The assets in which the balance of surplus capital is invested must not pose a material risk to the asset management company by reducing the value of its capital below the regulatory minimum requirement. Generally speaking, and in order to guarantee sound and prudent management, neither the assets of an asset management company nor any possible debts should create a material risk to its regulatory capital level.

Breakdown and investment of asset management company capital



Example 1:

An asset management company may only acquire another company belonging to the financial sector or not (for example, another asset management company) with the share of capital in excess of the above-mentioned 130% threshold (as the equities it acquires are not liquid or easily convertible into liquidities in the short term).

Also, regarding an acquisition of a company belonging to the financial sector, the amount of the holding to be deducted from the capital pursuant to Article 36 of the CRR is calculated taking account, on the one hand of the amount of the basic capital instruments (tiers 1 and 2) of the entity and, on the other hand of the value of the business acquired (an intangible fixed asset that must also be deducted from the capital of the management company making the acquisition, pursuant to the same article of the CRR).

(For the acquisition of a company that does not belong to the financial sector, only the value of the business will be deducted.)

After these deductions, the capital of the management company making the acquisition will then have to be restored to a level of 130% of the regulatory capital if it falls below this threshold further to the acquisition.

Example 2:

Asset management company A has a level of capital equal to €500,000 for a regulatory minimum threshold of €300,000 and wishes to incubate its new fund, which does not meet the requirements of paragraph I of Articles 317-3 and 321-11 of the AMF General Regulation (a retail private equity fund valued once a quarter, for example). It therefore ensures that it has a capital buffer of at least €90,000 (i.e. 30% of €300,000) before investing all or part of the balance of its surplus capital of €110,000 in the new product. To determine the amount allocated to the incubation of its new vehicle, the asset management company A must ensure that this investment does not present a risk to its capital level. Its total capital can be broken down as follows:

- €300,000 in regulatory capital;

- €200,000 in surplus capital, of which a buffer of €90,000 and a maximum €110,000 invested in its new fund.

Example 3:

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

- A capital buffer is constituted and invested in assets complying with paragraph I of Articles 317-3 and 321-11 of the AMF General Regulation. This portion of capital must enable the asset management company to avoid having to dip into its regulatory capital to meet any demands inherent in its business (an altered level of regulatory capital related to higher overheads, litigation, operating expenses, etc.). It is the asset management company's responsibility to define the buffer amount in the light of its estimated requirements. This amount should never be less than 30% of the asset management company's regulatory capital;
- Immediate availability upon the asset management company's first request of an amount equivalent to sums placed in a cash pooling arrangement;
- Precise identification of investment procedures, with express mention of exclusions;
- The integration into the monitoring programme of an investment methods review for capital made available within the framework of cash pooling.

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

Annex 1: Classification of derivatives and financial securities involving a derivative as either simple or complex (non-exhaustive list)

Classification of derivatives and financial securities involving a derivative as either simple or complex (non-exhaustive list)	
	Simple FI
	Complex FI
Underlyings	
Bond	traditional underlying: depends of valuation method and risk profile of FI
Interest Rate	traditional underlying: depends of valuation method and risk profile of FI
Exchange rate	traditional underlying: depends of valuation method and risk profile of FI
Equity	traditional underlying: depends of valuation method and risk profile of FI
Equity index	traditional underlying: depends of valuation method and risk profile of FI
Bond index	traditional underlying: depends of valuation method and risk profile of FI
Currencies/exchange rates	traditional underlying: depends of valuation method and risk profile of FI
Basket of shares	traditional underlying: depends of valuation method and risk profile of FI
Credit	traditional underlying: depends of valuation method and risk profile of FI
Implicit correlation	x non-traditional underlying
Implicit volatility	x non-traditional underlying
Estimated dividends	x non-traditional underlying
Commodities	x non-traditional underlying
Climate events	non-traditional underlying
Futures contracts	
Future	depends on type of underlying
Forward	depends on type of underlying
Vanilla options	
European	depends on type of underlying
American	depends on type of underlying
Put	depends on type of underlying
Call	depends on type of underlying
Warrants and French warrants	depends on type of underlying
Exotic options	
Asian	depends on type of underlying
Forward start	depends on type of underlying
Ratchet option	depends on type of underlying
Lookback	x
Digital or binary	x
Barrier (down, up, knock-in, knocked-out)	x
Rainbow (several underlyings)	x
Best-of/Worst-of	x
Complex bond option	x

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Classification of derivatives and financial securities involving a derivative as either simple or complex (non-exhaustive list)		
	Simple FI	Complex FI
Swaps:		
Classic rate swap (fixed/variable rate all combinations and inflation)	x	
Currency swap	x	
Cross currency interest rate swaps	x	
Asset Swap	depends on type of underlying	
Total Return Swap	depends on type of underlying	
Contract for Differences (CFD)	x	
CFD on a basket of shares	x	
Variance swap		x
Volatility swap		x
Financial securities involving a derivative		
Partly paid security	x	
Convertible bond	x	
Callable/puttable bond (without other option or complex elements)	x	
Structured EMTN/structured certificate with one or more simple embedded derivative	x	
Structured EMTN/structured certificate with embedded complex derivatives		x
Autocall		x
Contingent convertible bond (CoCo)		x
Catastrophe bond (cat bond)		x
Credit market		
Single-issuer credit default swap (single entity)	x subject to standardised contract and information available on the markets about the underlying entity	
CDS index (type CDX or iTraxx)	x subject to index liquidity and accessibility	
Basket default swap (first-to-default, n-th to default, n out of m to default, all to default, etc.)		x
Credit default swap: call option on the forward rate of a CDS with fixed strike and maturity.		x