

AMF Instruction

Procedure for preparing and registering an information document that must be filed with the AMF by intermediaries in miscellaneous assets – DOC-2017-06

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This instruction applies to the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the French Monetary and Financial Code that takes the initiative in the transaction and to the intermediaries mentioned in paragraph I, subparagraphs 2 and 3 of the same article. It should be remembered, however, that the provisions of article 14 of this instruction relating to advertising apply to all intermediaries in miscellaneous assets.

The intermediary that takes the initiative in the transaction is responsible for filing the dossier with the AMF.

Where fundraising or management is carried out by one or more entities other than the intermediary that takes the initiative in the transaction, this intermediary is also responsible for:

- filing the dossier;
- obtaining information proving that said entity/entities fulfils/fulfil the AMF General Regulation requirements specified by this instruction, and sending this information to the AMF.

This instruction specifies the provisions of articles 441-1 to 441-3 of the AMF General Regulation pursuant to articles L. 550-1 et seq. of the Monetary and Financial Code. It indicates the resources which the intermediaries in miscellaneous assets must possess, defines the methods for registering the information documents that must be filed with the AMF and provides details on the content of said documents.

Chapter I - Introduction – Legal framework

Section 1 - Intermediaries in miscellaneous assets meeting the criteria set forth in article L. 550-1, paragraph I of the Monetary and Financial Code

Pursuant to article L. 550-1, paragraph I of the Monetary and Financial Code, *“An intermediary in miscellaneous property is:*

1. *Whoever, directly or indirectly, by means of advertising or direct marketing, regularly invites one or more existing or potential clients to subscribe to life annuities or to acquire title to movable or immovable property where the acquirers do not perform the management thereof themselves or where the contract offers a buy-back or exchange option with revaluation of the capital invested;*
2. *Whoever collects funds to that end;*
3. *Whoever is responsible for the management of such property.”*

Nature of the transactions concerned

The following come under the scope of application of intermediation in miscellaneous assets:

a) Subscription to life annuities

This concerns entities that collect assets from the public with a view to giving them to other entities, determined or otherwise, in exchange for a life annuity for the investor.

b) Acquisition of title to movable or immovable property where the acquirers do not perform the management thereof themselves¹

This concerns:

- title bestowing direct power over one or more assets; these are rights in rem. They may include, inter alia, a property title (including co-ownership), a bare title or the right of usufruct;
- title bestowing use or access to ownership of an asset (e.g. the acquisition of title enabling asset ownership at the end of the contract or bestowing use of an asset for a fixed or indeterminate period).

The proposed transaction falls within the scope of application of intermediation in miscellaneous assets:

- regardless of whether the title is acquired concurrently with the document entrusting management of the assets to a third-party management company; and/or
- regardless of whether the applicant and the asset manager are one and the same.

Transactions involving miscellaneous assets also include proposals concerning assets which, by their very nature and how they are used, can be managed only by entities with specific and tailored skills.

¹ It should be remembered that the acquisition of title to immovable property is not covered by intermediation in miscellaneous assets if the property in question is housing and commercial or professional premises, or land for the construction of such housing or premises (article L. 550-1 VI of the Monetary and Financial Code).

c) Acquisition of title to movable or immovable property where the contract offers acquirers a buy-back or exchange option with revaluation of the capital invested

The conditions are deemed to have been met, whether the transaction gives rise to one or more contracts (concurrent or otherwise) and regardless of whether one of the contracting parties is a third party vis-à-vis the seller and acquirer of the title.

However, the investor making a unilateral promise to sell after a certain period has elapsed does not constitute a buy-back option within the meaning of article L. 550-1 of the Monetary and Financial Code. In such a case, marketing discourse must be clear, precise and accurate so as to be unambiguous that the investor shall not, under any circumstances, be guaranteed the entitlement to demand the repurchase of his/her investment.

Exclusions under law

In compliance with article L. 550-1, paragraph VI of the Monetary and Financial Code, intermediation in miscellaneous assets does not concern proposals relating to:

- “1. *Bank transactions;*
- 2. *Financial instruments and equities;*
- 3. *Transactions governed by the Insurance Code, the Mutual Insurance Code and the Social Security Code;*
- 4. *Acquisition of title to housing and commercial or professional premises, or land for the construction of such housing or premises.*”

Entities affected by the set of laws governing intermediation in miscellaneous assets

As regards the entities concerned:

- the entities mentioned in article L. 550-1, paragraph I, subparagraph 1 of the Monetary and Financial Code include both the entity that takes the initiative in the transaction and the distributors;
- the entities mentioned in article L. 550-1, paragraph I, subparagraph 2 of the Monetary and Financial Code are those that collect the funds to acquire the title to property, but also those through which the profits resulting from the management or sale of said title pass and those responsible for executing the commitments made in a buy-back contract;
- the entities mentioned in article L. 550-1, paragraph I, subparagraph 3 of the Monetary and Financial Code (managers) are those that carry out actions pertaining to the management of the property, after the title has been sold to the investor.

Section 2 - Intermediaries in miscellaneous assets meeting the criteria set forth in article L. 550-1, paragraph II of the Monetary and Financial Code

In compliance with article L. 550-1, paragraph II of the Monetary and Financial Code:

“II.- An intermediary in miscellaneous assets is also any entity that gives one or more existing or potential clients the opportunity to acquire title to one or more assets, promoting the potential for a direct or indirect financial return or a return with a similar financial effect.”

Nature of the transactions concerned

This concerns offers to acquire assets or title to one or more assets that involve promotion of a direct or indirect financial return or a return with a similar financial effect, without fulfilling the transaction criteria set forth in article L. 550-1, paragraph I of the Monetary and Financial Code.

Exclusions under law

The same exclusions as those mentioned in Section 1 apply.

Entities concerned

The entities mentioned in article L. 550-1, paragraph II of the Monetary and Financial Code include both the entity that takes the initiative in the transaction and the distributors.

Section 3 - Obligations of the intermediaries in miscellaneous assets mentioned in article L. 550-1, paragraphs I and II of the Monetary and Financial Code

The obligations incumbent upon each of the intermediaries in miscellaneous assets are mentioned in Annex 3 of this instruction.

Chapter 2 - Items contained in the dossier filed with the AMF

Section 1. Documents pertaining to the transaction participants

Article 1 - Organisation, good repute, experience and competence

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction and the entities mentioned in paragraph I, subparagraphs 2 and 3 of the same article.

Pursuant to articles 441-1 and 441-3 of the AMF General Regulation, the dossier filed with the AMF contains proof that the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the French Monetary and Financial Code that takes the initiative in the transaction and the intermediaries mentioned in paragraph I, subparagraphs 2 and 3 of the same article have sufficient and transaction-specific guarantees as to their organisation, good repute, experience and competence.

As regards good repute, for each participant the dossier is accompanied by annex 1 – Data sheet to be provided by participants in a transaction involving miscellaneous assets, and by a copy of their criminal record (form no. 3)².

As regards experience and competence, the dossier includes:

- the bylaws of legal-person intermediaries;
- the CVs of natural-person intermediaries or people with the power to manage or administer the participant legal-person intermediaries. The CVs must display at least two years' experience in the field of activity underlying the offer;
- for legal-person intermediaries, the statement of financial position and income statement for the last three financial years, or, in the case of a new entity, its provisional accounts for the next three financial years.

These documents must be written in French, up to date, dated and signed so the AMF can ensure that the professional skills of the entities in question are suitable for the activities envisaged pursuant to article 441-1 of the AMF General Regulation.

As regards organisation, the dossier contains a description of the material, financial and human resources available to the intermediaries in question.

² Or a certificate in lieu of a copy of the criminal record, issued by the competent authority in the country where the individual resides.

Article 2 - Professional indemnity insurance for the intermediary in miscellaneous assets

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction and the entities mentioned in paragraph I, subparagraphs 2 and 3 of the same article.

Pursuant to articles 441-1 and 441-3 of the AMF General Regulation, the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the French Monetary and Financial Code that takes the initiative in the transaction should provide evidence in the dossier filed with the AMF that the intermediaries mentioned in article 441-1 have taken out professional indemnity insurance. This cover is underwritten by an insurance company authorised to conduct its business in France and adapted to the risks associated with the activities carried out.

Insurance that meets the following criteria is deemed to be adapted to the risks associated with the activities carried out:

- a) an initial term of at least one year, tacitly renewed on the anniversary of the policy;
- b) a minimum termination notice period of 90 days;
- c) coverage of professional indemnity risks for the activity carried out;
- d) policy with an insurance company authorised to provide professional indemnity cover in France;
- e) provided by an entity that is not party to the transaction.

Professional indemnity risks include, but are not limited to:

- a) the loss of documents;
- b) actions, errors or omissions resulting in non-compliance with legal and regulatory obligations or the obligation to act in the exclusive interest of investors.

The professional indemnity insurance policy entered into contains cover of at least €400,000 per claim and €800,000 per insurance each year.

The intermediary must provide the AMF with the professional indemnity insurance certificate(s) issued by the insurer.

The intermediary must notify the AMF immediately of any suspension of cover, non-renewal or termination of the insurance policy.

Article 3 - Conflicts of interest

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction and the entities mentioned in paragraph I, subparagraphs 2 and 3 of the same article.

Pursuant to article 441-1 of the AMF General Regulation, the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction and the intermediaries mentioned in paragraph I, subparagraphs 2 and 3 of the same article shall not carry out any activity that may give rise to a conflict of interests to the detriment of the investor.

These conflicts relate both to professional activities and personal situations.

The intermediary attaches to the dossier a description of the procedures put in place to prevent a conflict of interests to the detriment of the investor.

Section 2. Documents relating to the transaction

Article 4 - Opening a single account dedicated to the transaction

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

In order to prove, pursuant to articles 441-2 and 441-3 of the AMF General Regulation, that a single account dedicated to the transaction has been opened with a credit institution authorised to carry out its activity in France, containing investors' subscriptions and the investment income payments made by the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction, the dossier filed with the AMF includes a certificate from the credit institution where the account was opened.

Article 5 - Insurance of assets

Article 5.1. - Proof of entrance into an insurance policy that covers the assets handed over in exchange for a life annuity

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

Pursuant to article 441-2, paragraph I, subparagraph 2 of the AMF General Regulation, the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction should provide evidence that an insurance policy covering the assets handed over in exchange for a life annuity has been taken out with an insurance company authorised to carry out its business in France. This cover should be:

- a) available at any moment;
- b) adapted to the nature of the assets handed over in exchange for a life annuity.

The insurance policy taken out must meet the following criteria:

- a) an initial term of at least one year, tacitly renewed on the anniversary of the policy;
- b) cover at least equal to the value of the assets handed over in exchange for a life annuity;
- c) a minimum termination notice period of 90 days.

The intermediary must provide the AMF with the insurance certificate issued by the insurer.

The intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 of the Monetary and Financial Code that takes the initiative in the transaction must notify the AMF immediately of any suspension of cover, non-renewal or termination of the insurance policy.

Article 5.2. - Proof of entrance into an insurance policy that covers the assets to which title has been acquired (if adapted to the nature of the transaction)

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

Pursuant to article 441-2, paragraph II, subparagraph 1 of the AMF General Regulation, the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction should provide evidence that an insurance policy covering the assets to which title has been acquired has been taken out with an insurance company authorised to carry out its business in France. This cover should be:

- a) available at any moment;
- b) adapted to the nature of the assets in question;

The insurance policy taken out must meet the following criteria:

- a) an initial term of at least one year, tacitly renewed on the anniversary of the policy;

- b) cover at least equal to the value of the assets to which title has been acquired;
- c) a minimum termination notice period of 90 days.

The insurer provides the insured party with a certificate of insurance.

The intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction must notify the AMF immediately of any suspension of cover, non-renewal or termination of the insurance policy.

This obligation applies in all cases where the asset is not held by the acquirer.

Article 6 - Valuation procedure

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

1) Valuation at time of subscription

Pursuant to article 441-2, paragraph I, subparagraph 3 of the AMF General Regulation, the intermediary in miscellaneous assets mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction values the life annuity fees, the assets or the title to the assets at the time of subscription. The dossier includes the items proving compliance with this obligation, in particular those mentioned in 3) below.

2) Valuation procedure for assets offering a buy-back or exchange option

Pursuant to article 441-2, paragraph II, subparagraph 2 of the AMF General Regulation, the intermediary in miscellaneous assets mentioned in article L. 550-1, paragraph I, subparagraph 1 of the Monetary and Financial Code that takes the initiative in the transaction sets up a valuation procedure at appropriate intervals for the life annuity fees, the assets or the title to the assets, adapted to the nature of the assets or the title concerned in the presence of a buy-back or exchange option. In such a case, the valuation procedure must take place at least at the moment of the buy-back or exchange with revaluation of the capital for each investor.

The dossier includes the items proving compliance with this obligation, in particular those mentioned in 3) below.

3) Rules on valuation procedures

The dossier filed by the relevant intermediary in miscellaneous assets includes the valuation procedure for the life annuity fees, the assets or, if the transaction does not give the investor full ownership of the assets, the title to the assets concerned by the offer based on:

- a method enabling reliable and accurate valuation of the life annuity fees, the assets or the title to the assets, at the time of subscription, pursuant to article 441-2, paragraph I, subparagraph 3 of the AMF General Regulation and in the presence of a buy-back or exchange option pursuant to article 441-2, paragraph II, subparagraph 2 of the AMF General Regulation at appropriate intervals, as well as at the time of buy-back or exchange;
- the valuation of the life annuity fees, the assets or the title to the assets being clear, precise and accurate;
- adapted tools;
- suitable human resources.

The valuation procedure, which is subject to an expert opinion pursuant to article 441-3, subparagraph 1 of the AMF General Regulation and article 13 of the instruction, is also subject to detailed documentation.

This documentation records the valuation models used, their area of validity, the updating methods and the assumptions used.

Article 7 - Proof of acquisition of title to the assets to be provided to the investor

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

In compliance with article 441-2, paragraph I, subparagraph 6 of the AMF General Regulation, the intermediary in miscellaneous assets mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction provides investors with proof of the acquisition of title to the assets in question as soon as acquisition takes place. The dossier includes a formal commitment from the natural or legal person with the necessary authority.

The evidence can take the form of a title deed or proof of the title to the assets, and it cannot be contested.

Article 8 - Determining the typical investor profile

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

Pursuant to article 441-2, subparagraph 4 of the AMF General Regulation, the dossier includes details on the procedure enabling the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction to determine a typical investor profile adjusted for the risk involved in investing in miscellaneous assets.

The dossier presents the findings of the procedure and details the chosen typical investor profile, taking into account the characteristics, objectives and needs of the investors for whom the investment would be suitable.

Article 9 - Record-keeping

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

Pursuant to article 441-2, subparagraph 5 and article 441-3 of the AMF General Regulation, the dossier describes the procedures and tools enabling the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction to keep the necessary records so that the following can be identified at any moment:

- the sums corresponding to the subscriptions of each investor and the payment of their investment income;
- the life annuity fees or title to the assets held by each given investor.

Article 10 - Liquidity mechanism

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

If the investor has a buy-back or exchange option, pursuant to article 441-2, paragraph II, subparagraph 3 and article 441-3 of the AMF General Regulation, the dossier provides details on the mechanism guaranteeing the liquidity of the title to the assets.

The entities able to offer the liquidity guarantee mechanism are the credit institutions and insurance providers authorised to operate in France.

The contract includes the following information:

- the names and contact details of the parties to the guarantee contract;
- the date on which the guarantee contract enters into force;
- the term of the guarantee contract, which cannot be shorter than the term of the investment;
- the nature and amount of the life annuities, assets or title to the insured assets;
- the remuneration conditions of the guarantee contract;
- the termination conditions of the guarantee contract;
- the methods for implementing the guarantee.

Section 3. Dossier items

Article 11 - Dossier items

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

Pursuant to article 441-3 of the AMF General Regulation, the following documents need to be filed with the AMF:

- The expert report mentioned in article 441-3, subparagraph 1;
- Evidence of compliance with the obligations mentioned in articles 441-1 and 441-2, as specified by Articles 1-10 above;
- Advertising plans: this refers to sales and marketing documentation for all intermediaries in miscellaneous assets (including that of distributors relating to the proposal in question), regardless of medium (print, online, TV, etc.);
- The information document that fulfils the requirements set out in article R. 550-1 of the Monetary and Financial Code;
- The draft standard contracts put before investors;
- The legal documents pertaining to the following entities: the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction and, where applicable, the intermediaries mentioned in paragraph I, subparagraphs 2 and 3 of the same article (i.e. the initiator of the transaction, but also the asset manager and the entity that collects the funds):
 - o if these are companies, the company bylaws, the list of known shareholders or partners, an extract from the trade register (Kbis extract);
 - o if this is an individual company, an extract from the trade register (Kbis extract);
- The documents attesting to the financial structure of the following entities: the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction and, where applicable, the intermediaries mentioned in paragraph I, subparagraphs 2 and 3 of the same article (i.e. the initiator of the transaction, but also the asset manager and the entity that collects the funds):
 - o The nominated auditor.
 - o Proof of payment of the fixed fee mentioned in Article 19.1 of this instruction.

Chapter 3 - Preparing an information document

Article 12 - Content of the information document

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

In compliance with article 441-3 of the AMF General Regulation, the information provided in the information document should be complete, clear and consistent. This includes all the information that investors need to make their investment decision. The document consists of:

- an identification sheet for the proposed transaction. This is a single-page summary of the essential information contained later in the document. It uses the same layout as the offer document;
- an offer document using the standard layout defined in Annex 2 - Standard layout of offer document;

An information document should be prepared for each investment transaction proposed to the public (by given set of wagons or containers, by given forest, by collection of artwork, etc.)

The aim of the information document is to make potential investors aware of all the implications of investment; it is not a marketing document promoting the merits of the transaction and its intermediaries.

Article 13 - Expert intervention

Scope of application: the entity mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the intermediation in miscellaneous assets transaction.

Pursuant to article 441-3, subparagraph 1 of the AMF General Regulation, the dossier filed with the AMF comes with a report written by an independent expert who is recognised in the field in question and offers sufficient professional guarantees that they can perform their evaluation role effectively.

The expert must be independent of any actor that participates in the transaction and is mentioned in article L. 550-1 of the Monetary and Financial Code.

Independence means no connection, particularly no personal or capital-based connections, between the expert and any participant in the transaction in miscellaneous assets, and also no conflicts of interest.

The expert offers satisfactory professional guarantees in the field in question. These guarantees are provided in writing. They attest to the expert's qualifications and aptitude in terms of:

- a) human and technical resources: the dossier must provide details on the human and technical resources available to the nominated expert;
- b) professional indemnity insurance;
- c) adequate procedures;
- d) knowledge and understanding of the assets involved in the offer;
- e) a good reputation on the market in question.

Authorisation from the Court of Cassation or one of France's Courts of Appeal would lend credence to the standing of the expert.

The expert is committed to:

- a) possessing evaluation methods and tools for each category of assets that falls within their remit;
- b) complying with the principle of independence, and in particular adhering to a procedure for detecting conflicts of interest;
- c) implementing a disclosure policy and procedure by which they immediately inform the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code of any change in their circumstance compared with when they were appointed.

With the exception of fungible assets, the expert certifies the existence of assets to which title is available for purchase on an individual basis rather than a group basis.

Article 14 - Advertising

Scope of application: the entities mentioned in article 550-1 of the Monetary and Financial Code.

Article L. 550-1, paragraph III of the Monetary and Financial Code requires all intermediaries in miscellaneous assets to ensure that the information (including advertising material) they send to their clients, whether directly or indirectly, or any information which is likely to reach these clients, is clear, precise and accurate, regardless of the chosen medium.

The accuracy of the information is assessed based on a balanced presentation of the different characteristics of the proposed title to the miscellaneous assets. The risks must be given the same prominence as the benefits. The exact nature of the information is determined by the space afforded to the less favourable characteristics and the typography used.

As such:

- the risks of the offer are not presented in a footnote while the benefits are in the body of the document. They do not appear in the small print at the bottom of the website of the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 of the Monetary and Financial Code that takes the initiative in the transaction, and they are not simply included in the midst of other information;
- slogans are not simplified by mentioning just one positive characteristic of the offer;
- the past performance of investments made during previous offers or the ongoing offer does not constitute the central theme of the information. Indication of past performance is deemed to be the central theme when, for example, the font size used to present performance data is disproportionate to the font size used to present the other characteristics of the product;
- if the information includes simulations of future performance, it must be based on reasonable assumptions using objective elements. If performance is presented in gross terms, the effects of commissions, fees or other charges must be disclosed.

To be clear, the information presented must be sufficient to enable the investor to understand the primary characteristics of the offer. The investor must be able to assess the risks and benefits. The terminology used to present the offer must be comprehensible to the target clients as determined at the end of the procedure described in Article 8 above.

As such:

- the offer characteristics cannot be presented in language that is too technical or jargon-heavy for the target clients, because these damages the clarity of the information;
- the offer cannot be presented using ambiguous language that does not correspond to the economic reality of the product;
- an advertising document must not present an annual performance figure using a formula that creates confusion between past performance and the promise of future gains.

Misleading information presupposes that there is a will to deceive the investor through an incomplete or inaccurate presentation of the offer with a view to encouraging the sale thereof. Practice involving presenting the offer primarily through its most favourable characteristics can also be deemed misleading.

The AMF would like to remind operators that any form of misleading advertising is illegal in France. Pursuant to article L. 121-6 of the French Consumer Code, misleading advertising is punishable by two years' imprisonment and a fine of €300,000.

Chapter 4 - Conditions for allocating a registration number

Article 15 - Examination process

1) Person responsible for filing the dossier

The intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction (hereinafter also “the applicant”) sends a dossier to the AMF containing the points mentioned in Article 11 above. The dossier should be sent to the following email address: biensdivers@amf-france.org

Upon receipt, the AMF checks that the dossier is complete. If it is incomplete, the AMF asks the applicant for any necessary additional information.

2) Examination time frame

Pursuant to article L. 550-3 of the Monetary and Financial Code, the AMF “*shall have a period of [sixty days] in which to make its observations. Advertising or direct marketing cannot commence until the observations of the Autorité des Marchés Financiers have been complied with [...] A copy of the documents circulated shall be submitted to the Autorité des Marchés Financiers.*”

This period does not start until the AMF receives a complete dossier comprising all the information or documents required by applicable laws and regulations.

If the dossier is incomplete, the AMF can request from the applicant any document or piece of information required by applicable laws and regulations. In such a case, the two-month period mentioned in article L. 550-3 of the Monetary and Financial Code does not start until these missing documents or pieces of information have been received.

The AMF provides a notice of receipt once it is in possession of a complete dossier.

3) Request for missing documents or information

The AMF sends a list of missing documents or information to the applicant by all means of communication.

4) Allocation of the registration number

After reviewing the dossier, if the AMF believes that the information document complies with the legal and regulatory requirements and, where applicable, with its observations, it assigns a registration number to the document.

This number is sent to the filing entity by post and must be displayed at the beginning of the information document in the following format:

“This document has been filed with the Autorité des Marchés Financiers pursuant to article L. 550-3 of the Monetary and Financial Code and registered under number XX on XX/XX/XXX. ”

The registration number of this information document was assigned after the AMF verified that the document was complete and comprehensible, and that its content was consistent. The allocation of this registration number does not imply that the AMF has authorised the accounting and financial information presented, nor does it constitute a label of quality or a guarantee that the transaction will be completed successfully.

The registration number can be assigned provided the marketing conditions are limited according to the type of products and the guarantees offered, where applicable.

Article 16 - Scope of the AMF's examination

The AMF is committed to determining whether the offer contains the minimum level of guarantees required of an investment made available to the general public. It also checks that the investment proposition meets all the conditions laid down in articles 441-1 to 441-3 of the AMF General Regulation.

Article 17 - Marketing

Advertising or direct marketing cannot commence until the observations of the AMF have been complied with.

Since the AMF's review of the information document is not concerned with the quality of the offer being made to the investor, it does not involve advertising.

The intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction notifies the AMF of any changes to advertising immediately and before the adverts are published/broadcast.

Article 18 - Changes to offers

There are two possible situations in the event of changes to the terms and conditions of the registered offer:

A. If the change is minor and affects only secondary elements of the offer:

The intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction drafts an updated version of the information document and sends it to the investors, complete with a clear explanation of the reasons for, and consequences of, the change. Investors are provided with specific information about these elements.

B. If the change concerns substantial elements and affects the overall structure or commitment execution conditions:

The intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction submits a new information document to the AMF which supersedes the previous one and includes the elements mentioned in Chapters 1 and 2 above.

The document is examined by the AMF as per Articles 15 and 16 above.

Advertising or direct marketing cannot commence until the new registration number has been allocated.

Under the terms of article L. 550-3 of the Monetary and Financial Code, "*the right holders' consent to the change shall be validly given only when they have been expressly informed of the proposed change, the scope thereof and the reasons therefor in a document submitted to the Autorité des Marchés Financiers*". The changes must therefore be the subject of specific disclosure to investors and cannot be implemented without their explicit consent.

In the absence of such consent, the intermediary in miscellaneous assets undertakes either to:

- retain the initial offer conditions;
- or terminate the contract at no expense to the investor, returning the amount of the title to the assets at the buy-back or exchange value measured by the expert in compliance with article 441-2, paragraph II, subparagraph 2 of the AMF General Regulation.

Article 19 - Fees and contributions payable to the AMF

Article 19.1. - Fixed fee payable to the AMF upon submission of an information document or a draft standard contract relating to a proposed investment in miscellaneous assets

Scope of application: the intermediaries in miscellaneous assets mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that take the initiative in the transaction.

Pursuant to article L. 621-5-3, paragraph I, subparagraph 7 and article D. 621-27 of the Monetary and Financial Code, the intermediary in miscellaneous assets that files an information document or draft standard contract relating to a proposed investment in miscellaneous assets with the AMF shall pay a fixed fee of €8,000 at the time of said filing.

The intermediary in question should pay the fixed fee by cheque made out to the AMF's Accounting Department.

Article 19.2. - Annual contribution payable by the intermediaries in miscellaneous assets mentioned in article L. 550-1 of the Monetary and Financial Code

An annual contribution is also provided for under the terms of article L. 621-5-3, paragraph II, subparagraph 3d) and article D. 621-29 of the Monetary and Financial Code.

Chapter 5 - Ex-post disclosure obligations

Article 20 - Periodic disclosure to investors who have subscribed to a transaction mentioned in article L. 550-1, paragraph I of the Monetary and Financial Code

Every year, the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 of the Monetary and Financial Code that takes the initiative in the transaction and the intermediaries mentioned in subparagraphs 2 and 3 of the same paragraph send investors all the information they need on the progress of their investments, pursuant to articles L. 550-1, V and L. 550-4 of the Monetary and Financial Code.

All this information must be communicated to investors within three months of the end of the financial year in an annual report which must include, among other things, the following information:

- a general summary of changes in the economic sector to which the assets belong;
- elements that are likely to affect the value or profitability of the assets;
- the financial position (revenue, income, net financial surplus/debt) of the intermediary;
- where the assets are managed by someone other than the investor:
 - o changes in management conditions over the course of the financial year;
 - o the execution methods of the various contracts;
 - o details on the income and expense that has affected each asset, together with notes to the accounts and a reminder of the previous year's figures (where applicable);
 - o income (past and future) distribution and calculation methods;
- where there is a buy-back or exchange agreement:
 - o the provisions made in the asset manager's accounts to cover buy-back commitments;
 - o the situation regarding insurance policies and guarantees: premiums paid - payment date...

The following are attached to the annual report:

- balance sheet, income statement and notes to the accounts for the asset management company.

Article 21 - Half-yearly and annual reporting to the AMF

I. In the month following the end of each half-year, the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction and the intermediaries mentioned in paragraph I, subparagraphs 2 and 3 of the same article send a statement to the AMF containing the following information for the half-year just gone:

- capital collected, excluding tax;
- number of investors affected.

II. In the three months that follow the end of the financial year of each company in question, the intermediary mentioned in article L. 550-1, paragraph I, subparagraph 1 and paragraph II of the Monetary and Financial Code that takes the initiative in the transaction and the intermediaries mentioned in paragraph I, subparagraphs 2 and 3 of the same article send to the AMF:

- For the intermediaries mentioned in article L. 550-1, paragraph I of the Monetary and Financial Code: the documents mentioned in article L. 550-4 of the Monetary and Financial Code.
- For the intermediaries mentioned in article L. 550-1, paragraph II of the Monetary and Financial Code: the balance sheet, income statement and notes to the accounts of the corporate intermediaries
- For all the intermediaries mentioned in article L. 550-1, paragraphs I and II of the Monetary and Financial Code: the records mentioned in article 441-2, paragraph I, subparagraph 5 of the AMF General Regulation.