

AMF Position

Questions and answers about the marketing of investment vehicles primarily for tax deduction purposes - DOC-2008-20

Reference texts: article D. 321-1 of the Monetary and Financial Code

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The TEPA Act (act for the promotion of work, employment and purchasing power) adopted in summer 2007 provided for a reduction in the solidarity tax on wealth (ISF) in order to encourage investment in unlisted SMEs. This investment may either be direct or indirect by acquiring shares in a holding company or via the subscription of units in *Fonds d'investissement de proximité* (local investment funds, FIP), in *Fonds communs de placement dans l'innovation* (innovation-focused mutual funds, FCPI) or *Fonds communs de placement à risques* (venture capital funds, FCPR). The subscription of units in FCPRs no longer entitles holders to a tax deduction.

By their very nature, these products present particular characteristics in terms of risk and liquidity, and investors' attention should be drawn to these characteristics at the same time as the very high fiscal incentive and economic interest represented by the equity financing of unlisted SMEs. These products can therefore only be recommended after an analysis of the specific situation of the client and his investment objectives.

In this respect, the AMF wishes to draw the attention of persons who market these products to the rules that apply to direct marketing of unlisted securities (1) and to remind them that the nature of the risks attached to these financial instruments requires the provision of suitable information to each investor as well as an evaluation of his situation when investment advice is dispensed (2) and at the moment of execution of orders (3).

1. Which investment vehicles can be directly marketed?

In accordance with article L. 341-10 of the Monetary and Financial Code, units or shares in FCPR, FIP and FCPI, as well as securities issued by *sociétés de capital risque* (venture capital companies, SCR), may be directly marketed¹.

However, it is prohibited, unless otherwise provided for in the same article, to perform direct marketing operations with a view to having the prospective client subscribe or buy financial instruments not admitted to trading on a regulated market or not having been subject to a public offer giving rise to the publication of a prospectus². As a result, shares in holding companies may only be directly marketed if a prospectus has been authorised by the AMF and published.

It is reminded that direct marketing³ means any form of unsolicited contact by any means whatsoever with a given natural person or legal entity with a view to obtaining agreement on a transaction in a financial instrument. Direct marketing thus constitutes: the sending of unsolicited letters or electronic messages,

¹ Article 1 of Law n°85-695 of 11 July 1985.

² Article L. 341-10 of the Monetary and Financial Code.

³ Article L.341-1 of the Monetary and Financial Code.

cold calling and, depending on the circumstances, connection to a web site offering the opportunity to invest in such financial products.

In addition, units in FCPR, FIP or FCPI and shares in holdings can be offered to clients who are provided with an investment advice service either from an investment services provider or a tied agent⁴, or from a financial investment advisor.

2. Who can advise individuals to subscribe or buy units in a FCPR, a FCPI or a FIP, or shares in an ISF holding company?

The act of recommending the subscription or acquisition of units in FCPR, FCPI, and FIP or shares in a holding company offering tax deductions constitutes a personalised recommendation governed by:

- either the rules applicable to financial investment advice within the meaning of article L. 541-1 of the Monetary and Financial Code;
- or the rules applicable to investment advice services, which may only be provided by specially approved investment services providers and their tied agents in the normal course of business.

Irrespective of the applicable rules, this advice activity imposes on the professionals concerned a responsibility as regards the selection of investments, a responsibility which may not be limited solely to observing that the client is eligible for the product's expected tax advantages. More generally, the advisor shall act in the full interest of his client and recommend the products best suited to the client's situation, after examining the client's knowledge and experience in investment, his financial situation and his objectives, including those related to tax.

3. What rules govern the processing of orders related to unlisted shares?

The processing of a subscription or sale order shall give rise, depending on the circumstances, to an order reception and transmission service or an execution-only service, both of which are governed by the conduct of business rules laid down in Book III of the AMF General Regulation.

As the shares in an unlisted holding company are considered as complex products in accordance with article 314-57 of the AMF General Regulation, investors may not request application of the execution-only system which, when certain conditions are fulfilled, allows their order to be processed without their personal situation being examined beforehand by the service provider in order to ensure that the transaction is suitable.

⁴ Referred to in Article L. 545-1 of the Monetary and Financial Code.