



PLACING WITHOUT A FIRM COMMITMENT BASIS AND CROWDFUNDING

References: Article D. 321-1 of the Monetary and Financial Code

The placing without a firm commitment basis service is defined in Article D. 321-1 of the Monetary and Financial Code as "*the act of searching for subscribers or buyers on behalf of an issuer or seller of financial instruments [...] without guaranteeing them an amount in subscriptions or purchases*".

This definition was clarified by AMF Position DOC-2012-08 and ACPR Position 2012-P-02 of 16 July 2012 relating to the placement and marketing of financial instruments in the following terms: "*Each of these three investment services [placing without a firm commitment basis, placing on a firm commitment basis, underwriting] is thus characterised by the presence of two cumulative conditions: one is the existence of a service rendered to an issuer or vendor of financial instruments; and the other is the act of finding subscribers or purchasers, either directly or indirectly. The latter condition is the result of the former, in that subscribers or purchasers are only sought for the requirements of the service rendered to the issuer or the vendor. The service rendered to the issuer or vendor is thus central and is a prerequisite to the provision of one of these three placement investment services. At all events, if either of these two conditions is not met, there is no placement service (guaranteed or otherwise), nor is there an underwriting service.*"

Websites which establish contact between issuers whose securities are not listed¹ and subscribers are liable to provide investment services to both the former (placing without a firm commitment basis) and the latter (investment advice service).

Such platforms can be regarded as not providing the placing without a firm commitment basis service in the following conditions:

- (i) they have a website which meets the requirements set out in Article 325-48 of the AMF General Regulation;
- (ii) they are not actively seeking subscribers for a specific transaction;
- (iii) they provide investment advice service as investment service providers or crowdfunding investment advisers (CIAs).

Regarding the first point, a platform should restrict access to the detailed presentation of the various projects selected, on the basis of criteria and in accordance with a procedure defined beforehand and published on the website (*due diligence*), to potential investors who have been informed of and explicitly accepted the risks to which they will be exposed (risk of total or partial loss of the capital invested and risk of unavailability of the money invested due to the difficulty of selling the securities).

¹ I.e. which are not admitted to trading on a regulated market or on a multilateral trading facility.

In other words, before obtaining access to the detailed offers (in particular, the detailed description of the business, the business plan, the nominal amount or "entry ticket", information on the intended use of the money collected

on completion of the offer, information concerning the managers, directors and shareholders, the prospectus approved by the AMF where applicable, etc.), every investor will have to register (name, first name, email address) and answer two questions² relating to the capital and liquidity risks inherent in the type of offers selected by the platform.³ In the absence of a prospectus, the detailed offers must at least replicate in a clear, conspicuous and easily accessible manner the information listed in Article 217-1 of the AMF General Regulation.

The platform also makes subscription contingent on the investor's reply to other questions relating to their family status, wealth and occupational status, their experience and knowledge of financial matters and their goals. These questions make it possible to confirm or deny that the type of investment is indeed appropriate for the investor's profile.

The website pages accessible to the public prior to this identification may provide only a concise presentation of the project to be funded (name of the issuer and brief description of their business, amount sought, closing date for subscriptions or expressions of intent to subscribe).

Regarding the second point, if it is observed that the platform is tied by a contract to the issuer (or a third party related to it), for the purpose of searching for subscribers or buyers, or if it actively searches for subscribers or buyers in order to present a specific transaction to them and urge them to invest, e.g. via mailings by electronic mail or by the post, provision of the placing without a firm commitment basis service may not be ruled out. Sending a newsletter describing the current projects at the explicit request of the client (registered and having accepted the risks) does not characterise the placing without a firm commitment basis service.

Lastly, it should be remembered that the platform is subject, *inter alia*, to legislation concerning:

- benefits and remuneration;
- conflicts of interests (and in particular the obligation to work out and implement a suitable conflicts of interest management policy); and
- more generally, the obligation to act in the best interests of clients-subscribers.

These obligations apply in particular when the platform invoices fees to the issuer for the services which are provided for it (notably, administrative services - such as the handling and forwarding of subscription forms, legal services and communication – or advisory services regarding the balance-sheet structure, etc.).

It should also be remembered that the platform is bound by the obligations of information relating to fees and the services provided for the issuer as provided for in 7° of Article L. 547-9 of the Monetary and Financial Code and 325-54 of the AMF General Regulation.

² The questionnaire to access the detailed offers does not necessarily mean that the platform has complied with its obligations to verify the appropriateness of the proposed offer for the investor's situation.

³ The standard template of the questions and warnings to be replicated by the platform is described in detail in appendix.

Appendix: Standard template of a warning and questions relating to the risks inherent in the type of offers selected by the platform

For further information on the selected projects, you must register:

NAME:

FIRST NAME:

EMAIL ADDRESS:

NB: An investment in unlisted companies involves specific risks:

- Risk of complete or partial loss of the capital invested;

- Liquidity risk: resale of the securities is not guaranteed; it may be uncertain, or even impossible;

- The return on investment depends on the success of the project funded.

Are you aware that you could possibly lose your entire investment? YES NO

Are you aware that you will have difficulties in reselling your securities? YES NO

If the potential investor answers NO to one of the questions, the platform shall deny them access to the detailed offers.