

## AMF Position

### Guide to UCITS, AIF and other investment fund marketing regimes in France – DOC-2014-04

**Reference text: Articles L. 211-41, L. 214-2-2 and L. 214-24-1 of the Monetary and Financial Code.**

The AMF is keen to provide support for asset management players in a secure legal environment and has therefore decided to publish a guide to authorisation regimes for marketing in France of UCITS and AIFs,<sup>1</sup> listing the applicable provisions. It is hereby stated that this Guide does not address the procedures for marketing units or shares in AIFs subject to Regulations (EU) n° 345/2013 and n° 346/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds and European social entrepreneurship funds and Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds.

This Guide also deals with the marketing in France of units and shares in investment funds created under a foreign law that are not UCITS or AIFs.

Whenever marketing of a UCITS or AIF is being considered in France, the rules set out in this Guide shall be applicable, without prejudice to compliance with any other provisions, notably those on business conduct rules (see, for example, AMF Instruction DOC-2008-04 or AMF Position DOC-2010-05) those on banking and financial direct marketing or where relevant on those resulting from Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products.

This Guide shall be updated as necessary.

As a matter of method, the term “asset management company” shall mean an asset management company authorised in France, the term “management company” shall mean a management company authorised in a Member State of the European Union other than France, and the term “manager” shall mean a manager established in a third country.<sup>2</sup>

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<sup>1</sup> Including the “other AIFs” referred to in Article L. 214-24, III of the Monetary and Financial Code.

<sup>2</sup> When the AIF is self-managed, the terms “asset management company”, “management company” or “manager” shall refer to the AIF itself. You are reminded that in such cases, the vehicle must meet the same conditions as an asset management company or management company.

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## 1. Scope of application of this Guide: What is meant by “marketing in France” of units or shares of UCITS or AIFs?

Article 4, 1, x) of Directive 2011/61/EU of the European Parliament and the Council of 8 June 2011 (“AIFM Directive”) defines marketing as “a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the Union”.

### Position

On this basis, an “offering” or “placement”, within the meaning of Article 4, 1, x) of Directive 2011/61/EU, of units or shares of an AIF is considered as being their presentation by different means (advertising, direct marketing, advice...) with a view to encouraging an investor to subscribe to or purchase them. The same definition shall be taken for units or shares of UCITS.

In these conditions, the act of marketing units or shares of a UCITS or AIF consists in presenting them on French territory by different means (advertising, direct marketing, advice...) with a view to encouraging an investor to subscribe to or purchase them.

When units or shares of a UCITS or AIF have been marketed as defined above, those units or shares shall be considered as being marketed in France whenever investors among whom marketing in France was carried out are unit or shareholders in the said UCITS or AIFs.

However, the following shall not be considered acts of marketing in France:

1. the purchase, sale or subscription of units or shares of a UCITS or AIF in response to a client's unsolicited request to purchase a specifically designated UCITS or AIF, provided that the investor is authorised to do so;
2. the purchase, sale or subscription of units or shares of a UCITS or AIF under the terms of a third party portfolio management agreement, provided that such financial instruments are authorised in the investor's portfolio;
3. the purchase, sale or subscription of units or shares of a UCITS or AIF within the framework of the financial management of a UCITS or AIF, provided that such financial instruments are authorised in the assets of the UCITS or AIF;
4. the practice which, for management companies or third parties acting for their account, consists of contacting fifty investors at most in order to estimate their level of interest before launching a UCITS or AIF, provided:
  - such practice is conducted among (i) professional investors or (ii) retail investors whose initial subscription is greater than or equal to EUR 100,000<sup>3</sup>, and
  - such practice does not involve the delivery of a subscription form and/or document presenting definitive information about the characteristics of the fund, allowing these investors to subscribe, or undertake to subscribe, for units or shares of the UCITS or AIF for which the investors' interest is being ascertained. Should any of the investors contacted subscribe at a later time, however, this may not be considered as a subscription for UCITS or AIF units or shares in response to a client's request within the meaning of 1;
5. the purchase, sale or subscription of:
  - UCITS or AIF units or shares for the people mentioned in Article L. 533-22-2 of the Monetary and Financial Code within the framework of the asset management company's remuneration policies and practices,
  - UCITS or AIF units or shares for the management team of the management company that manages them, its senior managers or the management company itself,

<sup>3</sup> If the fund that is planned to be launched is an AIF open to professional investors (for example, a professional private equity investment fund) whose units or shares may be subscribed or bought by retail investors whose initial subscription is greater than or equal to EUR 100,000.



- carried-interest units;
- 6. the over-the-counter sale of units or shares of a UCITS or AIF between two investors (transactions on the secondary market), provided the sale is not organised by the management company or by a third party;
- 7. the participation of a management company in conferences or the organisation of investor meetings to inform investors about changes and trends in the market and the activities of the management company (management team, management strategies, funds that may no longer be subscribed and any other general communication), provided:
  - the conferences or meetings are reserved for professional investors, and
  - there is no solicitation to invest in a specific UCITS or AIF, or communication about a UCITS or AIF whose units or shares may be subscribed;
- 8. a management company's response to a request for proposals accompanied by specifications launched by a professional investor who is a legal entity to create a UCITS or AIF.

The AMF specifies that under no circumstances do these exceptions allow for the avoidance of marketing procedures or passport procedures where these are required. The AMF also highlights the management company's obligation to always act in an honest, fair and professional manner that promotes the integrity of the market (Article L. 533-1 of the Monetary and Financial Code, see also Article 14, paragraph 1 a) of Directive 2009/65/EC and Article 12, paragraph 1 a) of Directive 2011/61/EU).

- This definition of acts of marketing does not rule out definitions proposed by the competent authorities of a foreign country if plans are made to subscribe for or acquire units or shares of a UCITS or AIF after an act has occurred in that country.

## 2. Marketing in France of units or shares in a UCITS

### 2.1. What are the collective investment undertakings concerned by the regime for marketing in France of units or shares in UCITS?

The regime for marketing UCITS in France concerns only those UCITS authorised under Directive 2009/65/EC of the European Parliament and the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities. This regime makes no distinction according to:

- whether the investor is a retail client, a professional client or an eligible counterparty;<sup>4</sup>
- the amount of the subscription by the investor;
- whether the offer is intended for a restricted circle of investors.<sup>5</sup>

<sup>4</sup> Articles L. 533-16 and L. 533-20, D. 533-11 *et seq.* and D. 533-13 of the Monetary and Financial Code.

<sup>5</sup> It being stated that UCITS may in any case only reserve the subscription or purchase of their units or shares to a maximum of twenty investors. However, you are reminded that pursuant to Article 411-22 of the AMF General Regulation, "subscriptions of a given unit or share class may be reserved for a category of investors defined in the prospectus using objective criteria, such as a subscription amount, a minimum holding period or any other commitment given by the holder".

## 2.2. What is the regime for marketing in France of units or shares of UCITS?

**1. For French UCITS** – All French UCITS must receive an authorisation issued by the AMF prior to marketing their units or shares in France. Notification of this authorisation therefore constitutes authorisation of marketing on French territory.

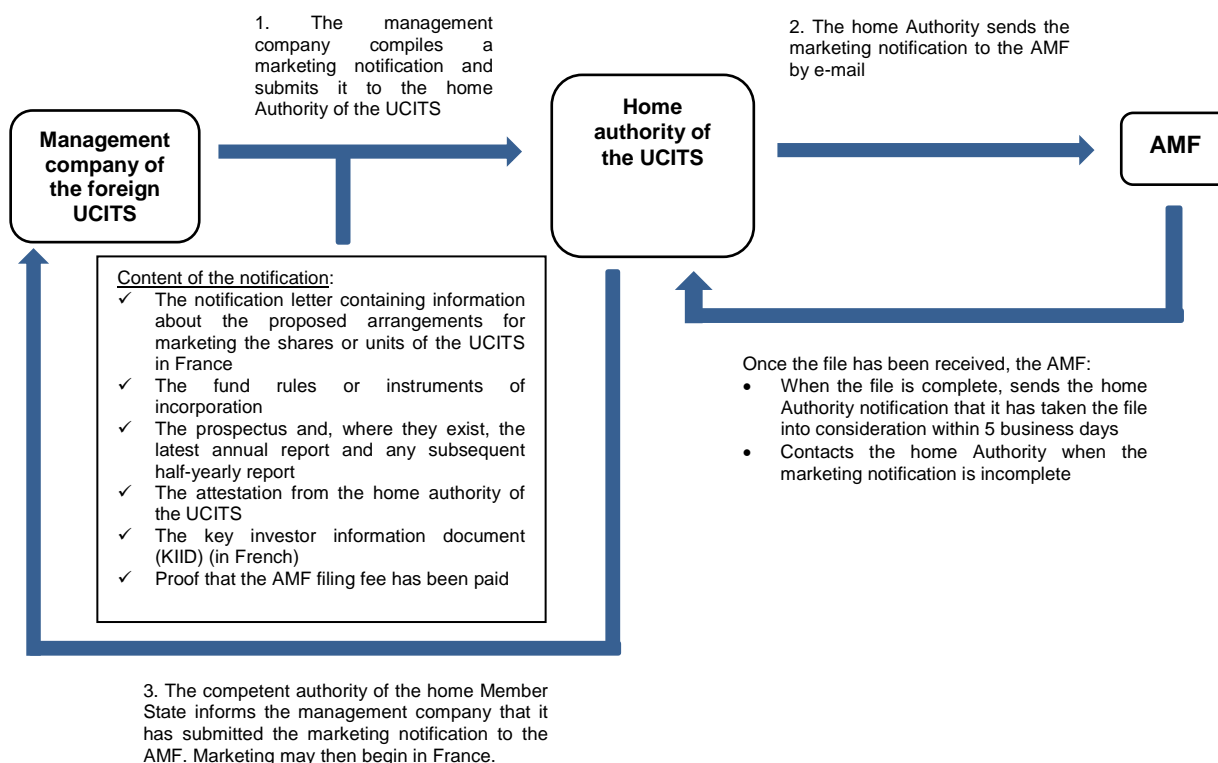
**2. For UCITS under the law of a Member State of the European Union or party to the European Economic Area agreement other than France** – All UCITS incorporated under foreign law must be the subject, prior to marketing their units or shares in France, of a notification of the AMF by the competent authority of the home Member State of the undertaking.

You are reminded that:

- the foreign UCITS must be managed by a management company authorised under Directive 2009/65/EC;
- the foreign UCITS that has been the subject of a notification shall appoint one or more correspondents, including a centralising correspondent, established in France;<sup>6</sup>

The notification procedure for marketing in France of foreign UCITS is described in Articles 36 and following of AMF Instruction - DOC 2011-19.

### Flowchart of the notification procedure for marketing in France of a foreign UCITS



<sup>6</sup> Article 411-135 and following of the AMF General Regulation.

**Further information...**

For French UCITS:

- Articles 411-9 and 411-14 of the AMF General Regulation.

For UCITS incorporated under foreign law:

- Article L. 214-2-2 of the Monetary and Financial Code;
- Article 411-135 of the AMF General Regulation;
- Articles 36 and following of AMF Instruction – DOC-2011-19
- French provisions applicable to marketing of units or shares of foreign UCITS on French territory

**3. Marketing in France to professional clients of units or shares of AIFs established in the European Union (France included) and managed by an asset management company or a management company**

**3.1. What is the scope of application of this regime?**

This marketing regime, referred to in Article L. 214-24-1, I of the Monetary and Financial Code, concerns AIFs established in the European Union (AIFs under French law and AIFs of another Member State), provided that they are managed by a (French) asset management company or a management company established in another Member State of the European Union, in both cases authorised under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (“AIFM Directive”). Under this regime, the asset management company or management company uses the harmonised mechanism between the various European Union Member States for marketing AIFs.

This asset management company or management company may thus market units or shares of the said AIFs not only in their home Member State (whether the AIF is established in that State or not),<sup>7</sup> but also in another Member State of the European Union<sup>8</sup> by a harmonised European procedure, regardless of any national systems there might be.

This harmonised procedure, set out in the AIFM Directive, concerns only marketing to professional clients.<sup>9</sup> It does not concern marketing to retail clients, which is subject to a specific regime (see below).

**NB:**

(French) asset management companies that are not authorised under the AIFM Directive are not subject to the marketing regime based on the AIFM Directive and referred to in Article L. 214-24-1, I of the Monetary and Financial Code. If the French asset management company is not authorised under the AIFM Directive<sup>10</sup> and wishes to market an AIF established in France to professional (and retail) clients in France, such marketing on French territory is permitted subject to notification of the authorisation of the AIF, declaration of the AIF or compliance with the provisions of the Prospectus Directive. However, as the asset management company has not received an authorisation under the directive, it shall not have the possibility of marketing the AIFs it manages in Member States of the European Union other than France using the harmonised mechanism provided by said directive.

<sup>7</sup> Article 31 of the AIFM Directive.

<sup>8</sup> Article 32 of the AIFM Directive.

<sup>9</sup> The professional clients referred to in Article D. 533-11 of the Monetary and Financial Code and clients opting for professional client treatment under the procedure set out in Articles D. 533-12 and D. 533-12-1 Monetary and Financial Code and 314-4 of the AMF General Regulation.

<sup>10</sup> The total value of the assets of the AIFs it manages, calculated in accordance with Article 2 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012, is below the thresholds of EUR 100 million and EUR 500 million provided by Article R. 532-12-1 of the Monetary and Financial Code and the asset management company has not opted for full application of the AIFM directive.

### **3.2. Who is concerned by the regime for marketing in France to professional clients only of units or shares of AIFs established in a European Union Member State (regime set out in Article L. 214-24-1, I of the Monetary and Financial Code)?**

The possibility provided by Article L. 214-24-1, I of the Monetary and Financial Code to market units or shares of a European Union AIF to professional clients in France concerns asset management companies established in France or management companies established in another Member State of the European Union under the following conditions:

**a) Asset management companies:** this (passport) marketing regime applies to asset management companies authorised under the AIFM Directive and which manage both AIFs established in France and AIFs established in another Member State of the European Union.

This must always be the case whenever the total value of the assets of the AIFs they manage, calculated in accordance with Article 2 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012, exceeds the following thresholds:

- the assets of the AIFs they manage, including any assets acquired through use of leverage, in total exceed a threshold of EUR 100 million, if at least one of the AIFs they manage makes use of leverage or if, for at least one of the AIFs they manage, a redemption right is exercisable during a period of five years following the date of initial investment, or
- the assets of the AIFs they manage in total exceed a threshold of EUR 500 million.

When the assets of the AIFs they manage are below these thresholds, asset management companies may opt to apply for authorisation under the AIFM Directive.

**b) Management companies established in another European Union Member State:** to benefit from the (passport) marketing regime, the management company established in another Member State of the European Union must be authorised under the AIFM Directive by the competent authority of the relevant Member State. This regime applies whether the management company manages AIFs established in France or AIFs established in another European Union Member State.

### **3.3. Is this regime exclusive (regime provided by Article L. 214-24-1, I of the Monetary and Financial Code)?**

Whenever the asset management company or management company must be authorised under the AIFM<sup>11</sup> Directive or has opted for its full application, this regime is exclusive of any other. In other words, a management company that is not authorised under the AIFM Directive is not allowed to market a European Union AIF in France.

Equally, outside this marketing regime, it is not authorised to market AIFs established in a European Member State to professional clients in France, whether they are managed by French asset management companies or management companies established in another European Union Member State. Likewise, a management company established in another European Union Member State may not market a French AIF in France without going through this marketing regime. For example, a management company established in a European Union Member State other than France, for which the assets of the AIFs it manages are below the thresholds of EUR 100 million or EUR 500 million and which has not opted for full application of the directive may not market its AIFs in France.

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<sup>11</sup> This is the case for French asset management companies above the thresholds referred to in Question 3.2 and for all management companies established in another Member State of the European Union.

### 3.4. What is the regime for marketing in France of units or shares of European Union AIFs (regime set out in Article L. 214-24-1, I of the Monetary and Financial Code)?

**a) Asset management companies:** pursuant to Article L. 214-24-1, I of the Monetary and Financial Code<sup>12</sup> transposing Article 31 of the AIFM Directive, prior to marketing units or shares of a European Union AIF, the asset management company must submit a notification to the AMF. The notification procedures are set out in the AMF General Regulation (Articles 421-1 and following of the AMF General Regulation).

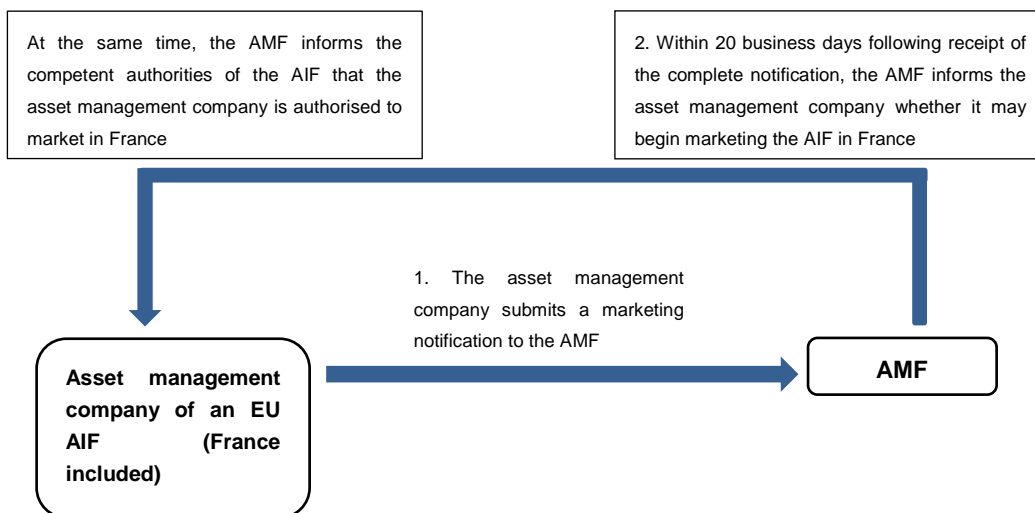
This notification includes:

- a) A notification letter, including a programme of operations identifying the AIFs the asset management company intends to market and information on where the AIFs are established;
- b) The AIF rules or instruments of incorporation;
- c) Identification of the depositary of the AIF;
- d) A description of, or any information on, the AIF available to investors;
- e) Information on where the master AIF is established if the AIF is a feeder AIF;
- f) Any additional information referred to in paragraphs 2 and 3 of Article L. 214-24-19 of the Monetary and Financial Code for each AIF the asset management company intends to market;
- g) Where appropriate, information about any arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the asset management company relies on activities of independent entities to provide investment services for the AIF.

AMF Instruction – DOC-2014-03 provides a notification template.

The AMF has 20 business days to inform the asset management company whether it may begin marketing of the AIF subject to the notification. AMF Instruction – DOC-2014-03 describes the procedure.

#### **Flowchart of the notification procedure for marketing in France of an EU AIF managed by a French asset management company**



<sup>12</sup> "The General Regulation of the Autorité des Marchés Financiers sets out the procedures for notification".





When the AIF is an authorised or declared AIF established in France, the asset management company may proceed with the marketing notification at the same time as making the authorisation application or declaration of the AIF. Where this is the case, the asset management company shall refer to the instruction applicable to the authorised or declared AIF (AMF Instruction - DOC-2011-20, DOC-2011-21, DOC-2011-22, DOC-2011-23 or DOC-2012-06).

**b) Management companies authorised in the European Union (outside France):** for management companies established in the European Union, the marketing procedure provided by Article 32 of the AIFM Directive shall be materially subject to the law of the home Member State of the management company.

The management company must submit a notification to the competent authority of its home Member State (see AMF Instruction DOC-2014-03). This notification will then be transmitted by the competent authority of the management company's home Member State to the AMF and notified to the management company by the competent authority of its home Member State. Marketing to professional clients in France may begin on the date of notification of the management company by its home competent authority.

*Further information...*

- Article L. 214-24-1, I of the Monetary and Financial Code;
- Articles 421-1 and following of the AMF General Regulation;
- AMF Instruction DOC-2014-03.

**3.5. Are there any transitional provisions?**

Yes. The regime for marketing in France to professional clients of European Union AIFs managed by an asset management company or a management company does not apply to marketing of units or shares of AIFs that are subject to a public offer with a prospectus that was drafted and published in accordance with Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003 prior to 27 July 2013, for the period of validity of the prospectus.

*Further information...*

Article 33 of Decree n° 2013-676 of 25 July 2013 amending the legal framework of asset management

However, neither the AIFM Directive nor Decree n° 2013-676 of 25 July 2013 amending the legal framework of asset management (notably transposing the AIFM Directive into French law) makes provision for asset management companies and management companies which have a period of one year within which to comply with the requirements of the directive. Consequently, such companies must have been authorised under the AIFM Directive to market AIFs established in another European Union Member State to professional clients in France and must comply with the passport procedure.

In other words, as long as such management companies have not been authorised under the AIFM Directive, marketing in France to professional clients of units or shares of AIFs established in another European Union Member State is not possible.

**4. Marketing in France to professional clients of units or shares of AIFs established in a third country and managed by an asset management company, a management company or a manager**

#### 4.1. What is the scope of application of this regime?

This marketing regime concerns AIFs established in third countries, whether they are managed by an asset management company, a management company or a manager. Such marketing is referred to as being “non-passport” in that it must comply<sup>13</sup> with the conditions set out in French legislation. The European “passport” regime allowing a harmonised procedure throughout Europe will not be applicable to AIFs from third countries until the possible adoption of a delegated act by the Commission.

This procedure concerns only marketing to professional clients.

#### 4.2. What is the regime for marketing in France of units or shares of AIFs established in a third country?

The conditions to be met for a third country AIF to be marketed in France are set out in Article D. 214-32 of the Monetary and Financial Code, pursuant to Article L. 214-24-1, I of the Monetary and Financial Code.

There are three such conditions.

- 1) The asset management company, management company or manager must comply with the laws and regulations applicable to management companies under the AIFM directive.

This condition is fulfilled when the asset management company or management company:

- has been authorised under the AIFM directive;
- has named one or more entities to fulfil the missions of the depositary (missions referred to in Article L. 214-24-8 of the Monetary and Financial Code);
- complies with the other obligations under the AIFM directive for the management of the AIF.

- 2) Appropriate cooperation arrangements are in place for monitoring systemic risk in accordance with the international standards, between the AMF and the competent authorities of the relevant European Union AIF or the competent authorities of the third country where the AIF or its manager is established, in order to ensure an exchange of information that allows the AMF to carry out its missions.

The list of cooperation agreements signed by the AMF is available at the following address: <http://www.amf-france.org/Acteurs-et-produits/Societes-de-gestion/Passage-AIFM.html?>

The text of these agreements may be consulted on the ESMA website at the following address: <http://www.esma.europa.eu/node/66691>.

- 3) Where the AIF or manager is established in a third country, the said country must not be on the lists published by the international bodies combating money laundering and the financing of terrorism, of States and territories in which the legislation and practices are a barrier to the proper execution of the missions of the Financial Action Task Force.

Article 421-13-1 of the AMF General Regulation states that the asset management company, management company or manager must submit a prior authorisation application to the AMF.

AMF Instruction DOC-2014-03 sets out the conditions under which the application is made for marketing in France. In particular, asset management companies and management companies (which must be authorised under the AIFM directive) must, in the form in Annex 3 to the Instruction:

<sup>13</sup> Articles 36 and 42 of the AIFM Directive.



- certify compliance with the laws and regulations applicable to management companies under the AIFM directive (except for the full regime of the depositary, see below) for the management of the AIF for which a marketing authorisation application is being made;
- certify that the missions referred to in Article L. 214-24-8 of the Monetary and Financial Code are carried out an entity or entities whose company name and contact details must be specified.

Managers must:

- certify and provide evidence (in a document attached to the form in Annex 3 to the Instruction) of compliance with the laws and regulations applicable to management companies under the AIFM directive (except for the full regime of the depositary, see below);
- certify that the missions referred to in Article L. 214-24-8 of the Monetary and Financial Code are carried out an entity or entities whose company name and contact details must be specified.

The AMF may request further information and must indicate, no more than two months after receipt of the full file, whether the asset management company, management company or manager may begin marketing units or shares of the AIF to professional clients.

You are reminded that, pursuant to Article 421-27 of the AMF General Regulation and as part of a passport-free commercialization, AIFs established in a European Union Member State other than France or a third country or their management company (except asset management companies) or their manager must name one or more correspondents, including a centralising correspondent.

#### **4.3. Are there any transitional provisions?**

No. The texts transposing the AIFM directive do not include any transitional provisions, meaning that asset management companies, management companies and managers must apply the new marketing regime with immediate effect.

### **5. Marketing in France to professional clients of units or shares of AIFs established in the European Union (France included) and managed by a manager established in a third country**

Marketing of units or shares of AIFs established in the European Union and managed by a manager is also referred to as “non-passport” in that it must comply, as in the case presented in Point 4.2 of this Guide, with the conditions set by French legislation in accordance with the AIFM directive.<sup>14</sup> These conditions are set out in Article D. 214-32 of the Monetary and Financial Code and described in Point 4.2 of this Guide. The European “passport” regime allowing a harmonised procedure in Europe will not be applicable to AIFs from third countries until the possible adoption of a delegated act by the Commission.

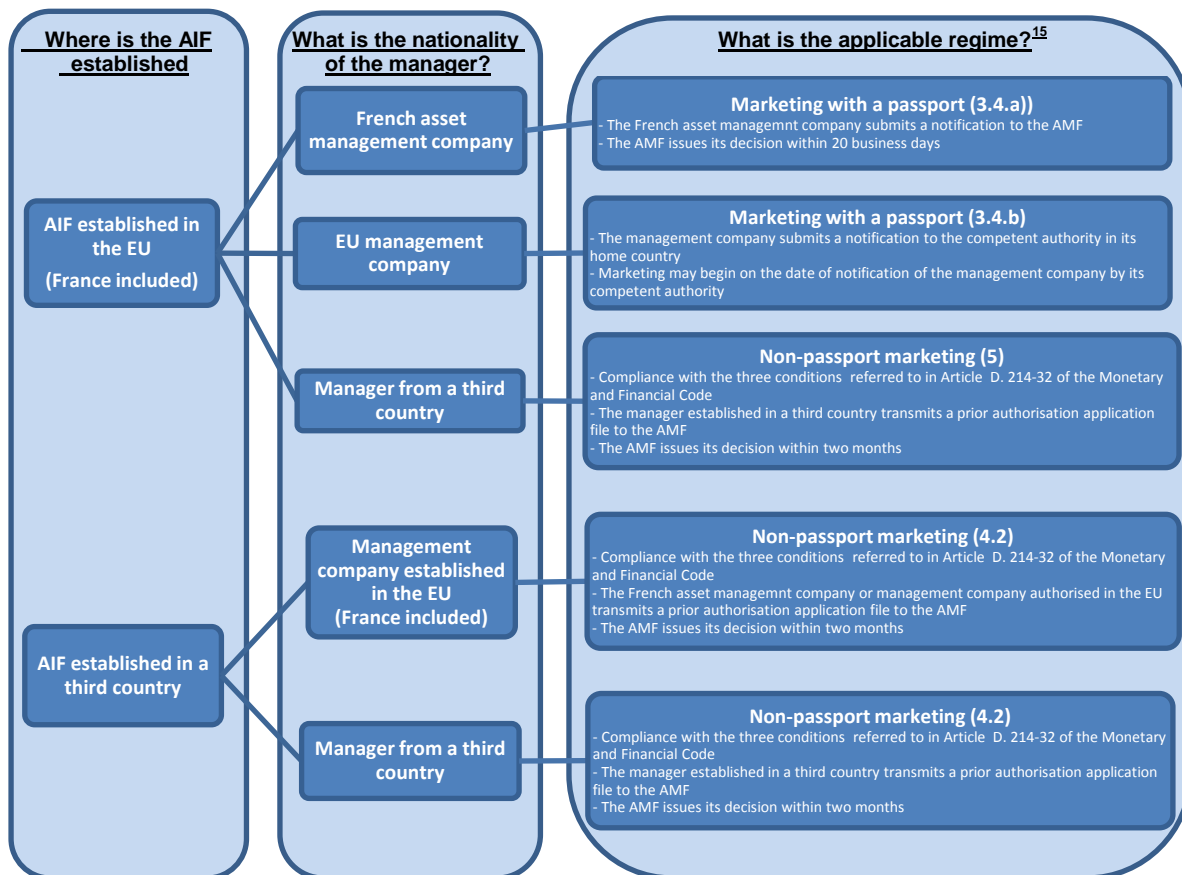
The regime for such marketing obeys the same conditions as those provided in Point 4.2 of this Guide.

This procedure concerns only marketing to professional clients.

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<sup>14</sup> Article 42 of the AIFM directive.

**Overview: marketing in France of units or shares of AIFs to professional clients**



**6. Marketing in France of AIFs to retail clients**

Provided that they are non-discriminatory, the AIFM directive allows Member States to impose stricter requirements on managers or AIFs than those applicable to AIFs marketed to professional clients. It is therefore possible for Member States to authorise marketing on their territory of units or shares of AIFs to retail clients. In accordance with Article 43 of this directive, Article L. 214-24-1, III of the Monetary and Financial Code authorises such marketing in France subject to the conditions set out in the AMF General Regulation.<sup>16</sup>

In this respect, a distinction should be made as to whether the AIF is established in France or abroad.

**6.1. What is the regime applicable to marketing to retail clients of units or shares of French AIFs?**

**a) AIFs established in France and managed by an asset management company that is not authorised under the AIFM directive:**<sup>17</sup> marketing to retail clients obeys no other rules than those relating, for example, to Directive 2003/71/EC of the European Parliament and the Council of 4 November

<sup>15</sup> The references between brackets refer to the corresponding paragraph numbers in this guide.

<sup>16</sup> Article 421-13 of the AMF General Regulation.

<sup>17</sup> Hypothesis in which total value of the assets of the AIFs they manage, calculated in accordance with Article 2 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012, is below the thresholds set out in Article R. 532-12-1 provided by Article R. 532-12-1 of the Monetary and Financial Code, as mentioned above, and the asset management company has not opted for full application of the AIFM directive.



2003, known as the Prospectus Directive,<sup>18</sup> or to the authorisation<sup>19</sup> or declaration<sup>20</sup> of the product, as appropriate. For example, a retail private equity investment fund (FCPR) managed by an asset management company that is not authorised under the AIFM directive is required only to follow the fund authorisation procedure. Likewise, a real estate investment company (SCPI) managed by an asset management company that is not authorised under the AIFM directive has no formalities to comply with other than those of the public offer regime.

**b) AIFs established in France and managed by an asset management company authorised under the AIFM directive:** Article 421-13 of the AMF General Regulation makes marketing to retail clients subject to a prior authorisation delivered by the AMF. The procedures for this authorisation are set out in AMF Instruction – DOC-2014-03.

Like for the notification procedure for marketing to professional clients (Paragraph 3.4. a), when the AIF is an authorised or declared AIF established in France, it is possible for the asset management company to proceed with the authorisation application for marketing to retail clients at the same time as making the authorisation application or declaration of the AIF. In this case, the asset management company must refer to the instruction that is applicable to the authorised or declared AIF (notably AMF Instructions - DOC 2011-20, DOC-2011-21, DOC-2011-22, DOC-2011-23 and DOC-2012-06).

This procedure does not exempt the asset management company from complying with the other provisions that may apply (as appropriate, public offer of financial securities requiring a prospectus approved by the AMF, authorisation or declaration of the product).

**c) AIFs established in France and managed by a management company or a manager:** Article 421-13 of the AMF General Regulation makes marketing to retail clients subject to a prior authorisation delivered by the AMF. Pursuant to the same article, this authorisation is subject to compliance with the following two conditions:

1. An instrument of information exchange and mutual assistance in the area of discretionary asset management has been put in place between the AMF and the supervisory authority of the management company or manager; and
2. The management company or manager meets the conditions provided by a mutual recognition agreement setting out the particular requirements applicable to the authorisation of management companies or managers of AIFs that may be marketed to retail clients, entered into between the AMF and the supervisory authority of the management company or manager.

The procedures for this authorisation are set out in Instruction AMF DOC-2014-03.

Also, as stated above, this procedure does not exempt the asset management company from complying with the other provisions that may apply (as appropriate, public offer of financial securities requiring a prospectus approved by the AMF, authorisation or declaration of the product).

## **6.2. What is the applicable regime for marketing to retail clients of units or shares of AIFs established in a Member State of the European Union other than France or in a third country?**

**a) AIFs established in a Member State of the European Union other than France or in a third country managed by an asset management company authorised under the AIFM directive:** Article 421-13 of the AMF General Regulation makes marketing to retail clients subject to a prior authorisation delivered by the AMF. Pursuant to the same article, this authorisation is subject to compliance with the following two conditions:

<sup>18</sup> This is the case, for example, of a private equity company which would be qualified as an "Other AIF".

<sup>19</sup> This is the case, for example, of a retail investment fund.

<sup>20</sup> This is the case, for example, of a specialised professional fund.



1. An instrument of information exchange and mutual assistance in the area of discretionary asset management has put in place between the AMF and the supervisory authority of the management company or manager; and
2. The AIF meets the conditions provided by a mutual recognition agreement on AIFs that may be marketed to retail clients, entered into between the AMF and the supervisory authority of the AIF.

The procedures for this authorisation are set out in Instruction AMF DOC-2014-03.

This procedure does not exempt the asset management company from complying with the other provisions that may apply, such as in the case of a public offer of financial securities, for example.

You are reminded that marketing in France of units or shares of AIFs established in a Member State of the European Union other than France and managed by an asset management company that is not authorised under the AIFM directive is not possible.

**b) AIFs established in a Member State of the European Union other than France or in a third country and managed by a management company or a manager:** Article 421-13 of the AMF General Regulation makes marketing to retail clients subject to a prior authorisation delivered by the AMF. Pursuant to the same article, this authorisation is subject to compliance with the following three conditions:

1. An instrument of information exchange and mutual assistance in the area of discretionary asset management has been put in place between the AMF and the supervisory authority of the management company or manager on the one hand and the supervisory authority of the AIF on the other,
2. The AIF meets the conditions provided by a mutual recognition agreement on AIFs that may be marketed to retail clients, entered into between the AMF and the supervisory authority of the AIF, and
3. The management company or manager meets the conditions provided by a mutual recognition agreement setting out the particular requirements applicable to the authorisation of management companies or managers of AIFs that may be marketed to retail clients, entered into between the AMF and the supervisory authority of the management company or manager.

The procedures for this authorisation are set out in Instruction AMF DOC-2014-03.

Also, as stated above, this procedure does not exempt the management company or manager from complying with the other provisions that may apply, such as in the case of a public offer of financial securities, for example.

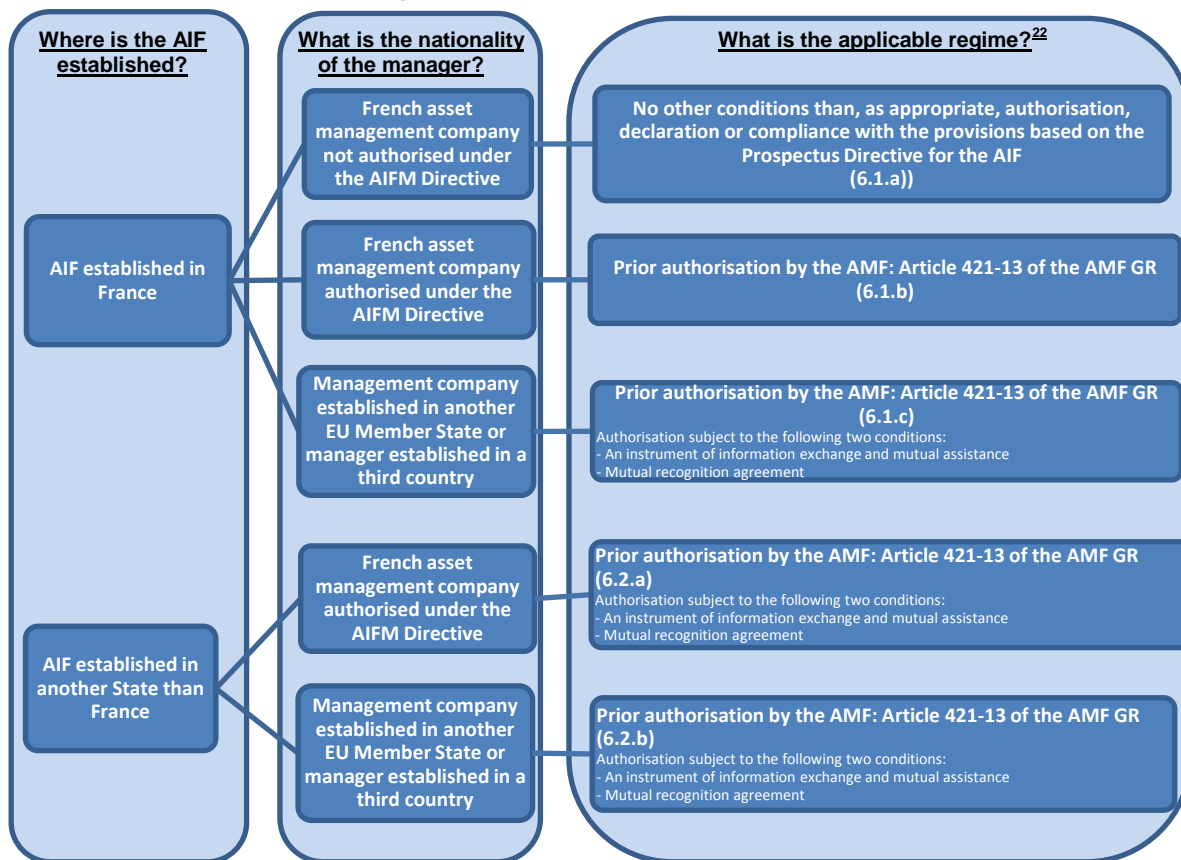
### **6.3. Does marketing of units or shares of AIFs<sup>21</sup> to retail clients require compliance both with the procedure for marketing to professional clients (with passport) and the procedure for marketing to retail clients?**

Yes. For all applications for an authorisation to market to retail clients units or shares of an AIF established in a Member State of the European Union and managed by a management company, the procedure for marketing to professional clients must have been complied with previously or must be complied with at the same time.

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<sup>21</sup> AIFs established in a Member State of the European Union and managed by a management company.

**Overview: marketing in France of units or shares in AIFs to retail clients**



**7. And what about marketing units of investment funds that are neither UCITS nor AIFs in France?**

Article L. 211-41 Monetary and Financial Code provides that "All equivalent instruments and rights representing a financial investment in an entity issued under a foreign law are fungible with the financial securities mentioned at article L. 211-1."

"Rights representing a financial investment in an entity issued under a foreign law" include units and shares issued by investment funds formed under foreign law that are not UCITS or AIFs.

Since the operating rules of these investment funds are extremely varied, it is advisable in all cases to check whether the entity concerned is open-ended, i.e. whether the entity redeems the rights representing the financial investment upon request by rights holders, or whether it is closed-ended.

There are two options:

1) the entity is open-ended, in which case the marketing of its units or shares will be by the regime provided by Articles L. 214-1-1 and D. 214-0 of the Monetary and Financial Code. Such marketing is therefore subject to obtaining a prior authorisation issued by the AMF if:

- the fund in question is subject to security and transparency rules that are equivalent to French rules: and

<sup>22</sup> References in brackets are to the corresponding paragraph numbers in this guide.



- an instrument of information exchange and mutual assistance in the area of discretionary asset management has been put in place between the AMF and the supervisory authority of the fund.

This regime makes no distinction according to:

- whether the investor is a retail client, a professional client or an eligible counterparty;
- the amount of the subscription by the investor;
- whether the offer is intended for a restricted circle of investors; or

2) the entity is closed-ended, in which case its marketing in France will be governed solely by the regime resulting from transposal into French law of the Prospectus Directive.

It may be subject to a public offering of financial securities or to private placement under articles L. 411-1 and L. 411-2 Monetary and Financial Code on the following conditions:

- if a closed-ended entity belonging to a Member State of the European Union wishes to make a public offering in France, it must first obtain approval for its prospectus from that State's authority, which must send an approval certificate to the AMF;
- if a closed-ended entity belonging to a third country and wishing to make a public offering in France produces a prospectus that requires AMF approval, the legal nature of the entity and the characteristics of the securities it issues must be eligible under the regime governing the public offering of financial securities in France. The entity must therefore present characteristics equivalent to those of a *société anonyme* or a *société en commandite par actions* that issues the financial instruments mentioned at 1 or 2 of article L. 211-1 Monetary and Financial Code.



## Overview of the regime applicable to marketing in France of units or shares of AIFs

		French asset management company		Management company authorised in another Member State of the European Union	Manager established in a third country
		not authorised under Directive 2011/61/EU	authorised under Directive 2011/61/EU		
French AIF	Professional clients	As appropriate, authorisation, declaration or compliance with the provisions based on the Prospectus Directive for the AIF	Procedure of prior notification to the AMF (Articles 421-1 and 421-2 of the AMF General Regulation)	Procedure of prior notification to the authority of the management company (Article 32 of Directive 2011/61/EU)	Non-passport marketing: procedure of prior authorisation by the AMF (Articles D. 214-32 of the Monetary and Financial Code and 421-13-1 of the AMF General Regulation)
	Retail clients		Procedure of prior authorisation by the AMF (Article 421-13 of the AMF General Regulation)	Procedure of prior authorisation by the AMF (Article 421-13 of the AMF General Regulation), subject among other things to the existence of a mutual recognition agreement	
AIF established in another Member State of the European Union	Professional clients	Marketing impossible	Marketing with a passport: procedure of prior notification to the AMF (Articles 421-1 and 421-2 of the AMF General Regulation)	Marketing with a passport: procedure of prior notification to the authority of the management company (Article 32 of Directive 2011/61/EU)	Non-passport marketing: procedure of prior authorisation by the AMF (Articles D. 214-32 of the Monetary and Financial Code and 421-13-1 of the AMF General Regulation)
	Retail clients		Procedure of prior authorisation by the (Article 421-13 of the AMF General Regulation), subject among other things to the existence of a mutual recognition agreement		
AIF established in a third country	Professional clients	Marketing impossible	Non-passport marketing: procedure of prior authorisation by the AMF (Articles D. 214-32 of the Monetary and Financial Code and 421-13-1 of the AMF General Regulation)		
	Retail clients		Procedure of prior authorisation by the AMF (Article 421-13 of the AMF General Regulation), subject among other things to the existence of a mutual recognition agreement		