

# GENERAL REGULATION OF THE AUTORITÉ DES MARCHÉS FINANCIERS



## BOOK I - THE AUTORITÉ DES MARCHÉS FINANCIERS

### TITLE I - FUNCTIONING OF THE AUTORITÉ DES MARCHÉS FINANCIERS : ETHICAL RULES AND REMUNERATION ARRANGEMENTS FOR MEMBERS AND EXPERTS

#### CHAPTER 1 - ETHICAL RULES FOR MEMBERS OF THE AUTORITÉ DES MARCHÉS FINANCIERS

##### **Article 111-1**

When they take office, members of the Autorité des Marchés Financiers ("AMF") shall inform the AMF chairman of :

1° any functions in an economic or financial activity that they have held during the previous two years or that they continue to hold ;

2° any executive office in a body corporate that they have held during the previous two years or that they continue to hold.

They shall also provide the chairman with a list of interests that they have held during the previous two years or that they continue to hold, with particular reference to the financial instruments of persons issuing securities to the public.

##### **Article 111-2**

When a member of the AMF subsequently takes up a new function in an economic or financial activity or a new executive office in a body corporate, he shall inform the AMF chairman without delay.

Before 15 February each year, members shall send the chairman a list of their interests as at 31 December of the previous year.

##### **Article 111-3**

Having regard to members of the Enforcement Committee, the chairman of the AMF shall forward the information provided for in the two above articles to the chairman of that Committee.

##### **Article 111-4**

At the written request of an AMF member, the AMF chairman shall inform him of any function or executive office held by another member.

##### **Article 111-5**

Where an AMF member notes that, under Article L. 621-4 of the Monetary and Financial Code, he is unable to discuss one or more points on the agenda of the Board, of a Specialised Committee, or of the Enforcement Committee or one of its divisions, he shall duly inform the chairman of the body in question.

Before appointing a member of the Enforcement Committee as a rapporteur, the chairman of this Committee must ensure that such member is not likely to have a conflict of interest, having regard to the persons involved in the proceeding at hand.

#### **Article 111-6**

Board members holding financial instruments of persons issuing securities to the public must entrust them to an investment service provider under a discretionary management agreement.

However, members may continue to directly manage units or shares in UCITS as well as debt securities issued or guaranteed by the State.

They may also decide, upon taking up their post, to keep their portfolio as it is. In this case, they may not acquire new financial instruments otherwise than through a transaction carried out by an issuer whose financial instruments they already hold, and only by exercising the rights attaching to those instruments. They must then inform the chairman promptly that they hold new financial instruments. Where they intend to dispose of financial instruments, they must ascertain from the chairman that the AMF does not hold inside information about the issuer in question. The chairman informs the interested party whether the planned transaction can take place on the scheduled date.

Notwithstanding the above, Board members are entitled to manage any equities or any options to subscribe for or purchase shares or units in employee profit-sharing funds (FCPE) that they hold by virtue of a function or executive office in a company making public issues of securities. Before acquiring or disposing of such shares or units or exercising such options in accordance with the relevant rules set by the company they must ascertain from the chairman that the AMF does not hold inside information about the company in question. The chairman informs the interested party whether the planned transaction can take place on the scheduled date.

If, prior to his appointment, a Board member holds an interest in concert with other investors in a company issuing securities to the public, he may keep his financial instruments while he is in office.

If he has to make exceptional disposals or purchases as a result of the strategy of such other investors, he must ascertain from the chairman that the AMF does not hold inside information about the company in question. The chairman informs the interested party whether the planned transaction can take place on the scheduled date.

The provisions herein apply to financial instrument accounts held in members' own names as well as to those upon which they are authorised to transact.

#### **Article 111-7**

The AMF chairman may carry out any checks he deems necessary to ensure that members of the AMF are in compliance with these provisions. To that end, members must waive banking secrecy, for the benefit of the chairman, with regard to all financial instrument accounts in their name.

The chairman may seek the assistance of a person of his choosing to perform such checks.

If he deems that a member is in breach of an obligation under this Book, the chairman informs the interested party and asks him to submit his observations. If, in the light of those observations, the chairman still feels the breach to be patent, he informs the authority that appointed the member in question.

The role assigned to the chairman by the above articles shall be carried out by the oldest Board member for matters regarding the chairman.

#### **Article 111-8**

When dealing with a case involving a person issuing securities to the public, members of the Enforcement Committee must refrain from trading for their own account in financial instruments issued by that person until such time as the Commission proceeding is complete.

#### **Article 111-9**

Members of the AMF shall take steps to ensure that the oral or written information transmitted to them in connection with their functions at the AMF remains strictly confidential.

## **CHAPTER 2 - ETHICAL RULES FOR EXPERTS APPOINTED TO CONSULTATIVE COMMITTEES**

#### **Article 112-1**

Experts appointed to consultative committees shall immediately inform the chairman of the AMF of :

1° any function they hold in an economic or financial activity ;

2° any executive office they hold in a body corporate.

Where an expert subsequently takes up a new function in an economic or financial activity or a new executive office in a body corporate, he shall inform the chairman without delay.

Where an expert notes that he would have a conflict of interest if he took part in discussions on one or more points on the agenda of a consultative committee, he shall duly inform the chairman of that committee.

Experts shall take steps to ensure that the oral or written information transmitted to them in connection with their functions at the AMF remains strictly confidential.

### CHAPTER 3 - EMOLUMENTS AND REMUNERATION

#### Article 113-1

The Board shall appoint an Emoluments and Remuneration Committee composed of three of its members and charged with proposing to the Board :

1° the amount of the emoluments payable to AMF members ;

2° an opinion concerning the remuneration envisaged by the AMF chairman for the Secretary General.

## TITLE II - THE RULING PROCEDURE OF THE AUTORITÉ DES MARCHÉS FINANCIERS

### CHAPTER 1 - REQUEST FOR RULING

#### Article 121-1

When queried in writing ahead of a transaction about an interpretation of this General Regulation, the AMF issues an opinion in the form of a written ruling (*rescrit*). This opinion stipulates whether, in light of the elements submitted by the interested party, the transaction contravenes this General Regulation.

#### Article 121-2

All persons referred to in Article L. 621-7 of the Monetary and Financial Code who initiate a transaction are entitled to submit a request for a ruling to the AMF.

#### Article 121-3

A request for a ruling is made in good faith and applies to a specific transaction.

The request shall be made by a person party to the transaction. It shall be submitted by registered letter with return receipt and shall be clearly marked "Ruling Request" (*demande de rescrit*).

#### Article 121-4

The request shall specify the provisions in this General Regulation for which the interpretation is requested and shall set forth the relevant aspects of the planned transaction.

The request shall be accompanied by a separate document giving the names of the persons concerned by the transaction and, where appropriate, any other elements needed for the AMF's assessment. The AMF shall ensure the confidentiality of this document.

#### Article 121-5

The AMF will dismiss without examination any request that does not meet the conditions set out hereabove. The petitioner will be informed of such dismissal.

## CHAPTER 2 - EXAMINATION OF THE REQUEST

### Article 122-1

The ruling is issued by the AMF within thirty working days of receipt of the request and is conveyed to the petitioner. If the request is imprecise or incomplete, the petitioner may be asked to provide supplemental information. In this case, the thirty-day deadline is suspended until the AMF has received that information.

### Article 122-2

Where it is unable to assess the true nature of the transaction, or where it considers that the request has not been made in good faith, the AMF duly informs the petitioner, within the time period specified in Article 122-1, of its refusal to issue a ruling.

### Article 122-3

A ruling is valid solely in respect of the petitioner.

Provided the petitioner complies with the ruling in good faith, the AMF shall not take any enforcement action or inform the judicial authorities as regards the aspects of the transaction addressed by the ruling.

## CHAPTER 3 - PUBLICATION OF THE RULING

### Article 123-1

The ruling and the request are both published in full in the next edition of the AMF's monthly review and on its website.

At the petitioner's request or on its own initiative, however, the AMF may postpone publication for a period of no more than 180 days starting from day the ruling was issued. If the transaction has not been completed by that date, the time period can be extended until the end of the transaction.

## TITLE III - CERTIFICATION OF STANDARD AGREEMENTS FOR TRANSACTIONS IN FINANCIAL INSTRUMENTS

### Article 131-1

Pursuant to Article L. 621-18-1 of the Monetary and Financial Code, the AMF can certify standard agreements for transactions in financial instruments, at the reasoned request of one or more investment services providers or a trade association of investment service providers. To that end, it ensures that the provisions of the standard agreement in question are consistent with this General Regulation.

## **TITLE IV - INSPECTIONS AND INVESTIGATIONS BY THE AUTORITÉ DES MARCHÉS FINANCIERS**

### **CHAPTER 1 - REPORTING OF TRANSACTIONS TO THE AMF**

#### **Articles 141-1 to 141-4**

*(Deleted by the Order of 11 september 2007)*

### **CHAPTER 2 - INFORMING THE AMF ABOUT THE NET ASSET VALUES OF COLLECTIVE INVESTMENT SCHEMES**

#### **Article 142-1**

The AMF must be informed of the net asset values of collective investment schemes if such values are calculated by the management company or open-ended investment company (SICAV) referred to in Point 7, Section II of the Article L. 621-9 of the Monetary and Financial Code that is responsible for such calculation.

### **CHAPTER 3 - SUPERVISION OF PERSONS REFERRED TO IN SECTION II OF ARTICLE L. 621-9 OF THE MONETARY AND FINANCIAL CODE**

#### **Article 143-1**

To ensure that the market operates in an orderly manner and that the activity of the entities and persons referred to in Section II of Article L. 621-9 of the Monetary and Financial Code complies with the professional obligations arising from laws and regulations or from the professional rules it has approved, the AMF carries out off-site examinations of records and on-site inspections at the business premises of such entities or persons.

#### **Article 143-2**

The persons referred to in Section II of Article L. 621-9 of the Monetary and Financial Code shall supply on request all information, documents and supporting evidence, regardless of the storage medium, to the AMF for supervisory purposes.

To ensure the proper performance of its supervisory duties, the AMF may order any of the persons referred to in Section II of Article L. 621-9 of the Monetary and Financial Code to retain information, regardless of the storage medium. Such a measure is confirmed in writing, with details of its duration and the conditions in which it may be renewed.

#### **Article 143-3**

Where an on-site inspection is conducted, the Secretary General issues an inspection order to the persons he has placed in charge.

The inspection order indicates, inter alia, the name of the entity or body corporate to be inspected, the identity of the head inspector and the purpose of the inspection. The head inspector informs the person concerned of the names of the other participating staff members or investigators.

The persons responsible for the inspection inform the inspected entity or person of the type of information, documents and supporting evidence to be communicated. They can interview any person acting under the authority or on behalf of the person being inspected who may be in a position to provide information that they deem useful for their assignment. They can verify the information they receive by checking it against information received from third parties.

Persons subject to inspection shall cooperate diligently and honestly.

#### **Article 143-4**

Where the proper performance of an AMF inspection has been hindered, this fact is mentioned in the inspection report or in a special report setting out these difficulties.

**Article 143-5**

Post-inspection reports are transmitted to the inspected entity or body corporate. Transmittal does not take place, however, if the Board, alerted by the Chief Executive, observes that a report describes facts which are capable of being characterised as criminal and deems that such transmittal could interfere with legal proceedings. The entity or body corporate to which a report has been transmitted is requested to submit its observations to the Secretary General of the AMF within a specified period, which cannot be less than ten days. These observations are forwarded to the Board if it when it examines the report in accordance with Section I of Article L. 621-15 of the Monetary and Financial Code.

**Article 143-6**

Having due regard for the conclusions of an inspection report and for any observations that may be submitted, the inspected entity or body corporate is informed by registered letter with return receipt or by hand delivery against receipt of the measures it is required to put in place. The entity or body is requested to forward the report and the aforementioned letter to its board of directors, or executive board and supervisory board, or the equivalent decision-making body, as well as to the statutory auditors.

Where the inspected entity or person is affiliated with a central body, as per Article L. 511-30 of the Monetary and Financial Code, a copy of the report and the letter shall also be sent to that body.

**CHAPTER 4 - INVESTIGATIONS****Article 144-1**

The General Secretariat of the AMF keeps a register of the authorizations provided for in Article L. 621-9-1 of the Monetary and Financial Code.

If, for the purposes of an investigation, the Secretary General wishes to call on a person that is not authorised to carry out investigations, he issues an authorization that is restricted to the investigation in question.

**Article 144-2**

To ensure that investigations proceed smoothly, investigators may order the retention of information, regardless of the storage medium. Such a measure is confirmed in writing, with details of its duration and the conditions in which it may be renewed.

**Article 144-3**

Where the proper performance of an AMF investigation has been hindered, this fact is mentioned in the investigation report or in a special report setting out these difficulties.

**Article 144-4**

The Board examines the investigation report pursuant to Article L. 621-15 of the Monetary and Financial Code.

# GENERAL REGULATION OF THE AUTORITÉ DES MARCHÉS FINANCIERS



## BOOK II - ISSUERS AND FINANCIAL DISCLOSURE

### TITLE I - ISSUANCE OF FINANCIAL INSTRUMENTS TO THE PUBLIC

#### CHAPTER I - SCOPE

##### Section 1 - Definition

###### Article 211-1

Persons or entities issuing financial instruments to the public, within the meaning of Article L. 411-1 of the Monetary and Financial Code, shall be subject to Chapter II of this Title if the offer involves :

- 1° financial instruments referred to in Points 1° and 2°, Section I of Article L. 211-1 of said Code ;
- 2° financial instruments referred to in Point 3°, Section I of Article L. 211-1 of said Code where they are issued by the bodies referred to in Points 2° to 4°, Section I of Article L. 214-1 of said Code ;
- 3° all equivalent instruments issued in accordance with foreign law.

The issuance and disposal of financial instruments referred to in Point 1°, Section II of Article L. 211-1 of said Code shall be subject to Chapter III of this Title.

###### Article 211-2

The transactions referred to in Article L. 411-2 of the Monetary and Financial Code do not constitute public issuance.

The issuance or disposal of financial instruments referred to in Points 1° or 2° of Article L. 211-1 of the Monetary and Financial Code issued by a *société anonyme* (public limited company), a *société en commandite par actions* (limited partnership with share capital) or an equivalent corporate structure under foreign law do not constitute public issuance, within the meaning of Section II of the above article, if the transaction has one of the following characteristics :

- 1° the total amount is less than EUR 100,000 or the foreign currency equivalent ;
  - 2° the total amount is between EUR 100,000 and EUR 2,500,000 or the foreign currency equivalent and the transaction concerns financial instruments accounting for no more than fifty per cent of the capital of the issuer ;
- The total amount of the transaction referred to in Points 1° or 2° shall be calculated over a twelve-month period from the date of the first transaction.
- 3° The transaction is intended for investors acquiring at least EUR 50,000 worth, or the foreign currency equivalent, per investor and per transaction, of the relevant financial instruments ;
  - 4° The transaction concerns financial instruments with a minimum denomination of at least EUR 50,000 or the foreign currency equivalent.

**Article 211-2-1**

Any person or entity mentioned in Part II of Article D. 411-1 of the Monetary and Financial Code that wishes to be added to the database provided for in Article D. 411-3 of the aforementioned code must complete the relevant form, which is available on the AMF's website, and must return it to the AMF along with a photocopy of a current identity document or a certificate of professional registration. The AMF shall send the person or entity acknowledgement of receipt indicating that their name has been added to the database.

Any person or entity wishing to relinquish qualified investor status must complete the relevant form, which is available on the AMF's website, and must return it to the AMF along with a photocopy of a current identity document or a certificate of professional registration. Qualified investor status is surrendered from the day on which the person or entity receives acknowledgement of receipt from the AMF indicating that they have been removed from the database.

Third parties may not query the database.

**Section 2 - Transactions outside the scope of public issuance****Article 211-3**

Transactions outside the scope of public issuance involving financial instruments referred to in Articles L. 411-1 and L. 411-2 of the Monetary and Financial Code, whether or not they are admitted to trading on a regulated market, do not require a prospectus approved by the AMF.

**Article 211-4**

The initiator, or the intermediary carrying out the transaction, whichever is the case, shall inform investors participating in a transaction referred to in Article 211-3 that :

1° the transaction does not require a prospectus to be submitted for approval to the AMF ;

2° persons or entities referred to in Point 4°, Section II of Article L. 411-2 of the Monetary and Financial Code may take part in the transaction solely for their own account, as provided in Articles D. 411-1, D. 411-2, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the Monetary and Financial Code ;

3° the financial instruments thus acquired cannot be distributed directly or indirectly to the public otherwise than in accordance with Articles L. 411-1, L. 411-2, L. 412-1 and L. 621-8 to L. 621-8-3 of the Monetary and Financial Code.

**CHAPTER II - INFORMATION TO BE DISSEMINATED WHEN FINANCIAL INSTRUMENTS ARE ISSUED TO THE PUBLIC****Section 1 - Prospectus****Article 212-1**

Before effecting a transaction within the European Economic Area (EEA), persons or entities referred to in Article 211-1 shall prepare a draft prospectus and submit it for approval by the AMF or the competent supervisory authority of another Member State of the European Community or a State party to the EEA agreement.

**SUB-SECTION 1 - COMPETENT AUTHORITY****Article 212-2**

The draft prospectus shall be submitted to the AMF for prior approval in the following cases :

1° the issuer has its registered office in France and the transaction involves :

- a) financial instruments referred to in Section I of Article L. 621-8 of the Monetary and Financial Code ; or
- b) financial instruments referred to in Section II of the above article, where the issuer has chosen the AMF to approve its prospectus ;

2° the transaction is carried out in France and involves :

- a) financial instruments referred to in Section II of the above article, where the issuer has chosen the AMF to approve its prospectus ; or



b) financial instruments referred to in Section IV of the above article ;

3° the issuer has its registered office outside the EEA and the transaction involves financial instruments referred to in Section I of the above article, provided that :

a) the first transaction was carried out in France after 31 December 2003, subject to a subsequent election by the issuer where the transaction was not effected by the issuer ;

b) the first transaction was made in a Member State of the European Community or a State party to the EEA agreement, other than France, after 31 December 2003 at the decision of an initiator other than the issuer and the issuer decides to carry out in France its first transaction as initiator.

In the cases mentioned in a) or b), the issuer, which has financial instruments already admitted to trading on a regulated market, shall inform the AMF of its decision by 31 December 2005 at the latest.

4° In cases other than those mentioned in Points 1° to 3°, the AMF may agree to approve the draft prospectus at the request of the competent authority of another Member State of the European Community or a State party to the EEA agreement.

### Article 212-3

Where the AMF is not the competent authority to approve the prospectus, the supervisory authority that approved the prospectus shall send the AMF, at the request of the persons or entities wishing to offer financial instruments to the public in France, as provided for in Articles 212-40 to 212-42, the certificate of approval and a copy of the prospectus, together with a French translation of the summary note, where appropriate.

## SUB-SECTION 2 - EXEMPTIONS

### Article 212-4

The obligation to publish a prospectus does not apply to the disposal or issuance of the following financial instruments :

1° shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issuer's capital ;

2° financial instruments offered in connection with an *offre publique d'échange* or an equivalent exchange procedure under foreign law, provided that a document, subject to AMF scrutiny and containing information equivalent to that of the prospectus, is made available by the issuer ;

3° financial instruments offered, allotted or to be allotted in connection with a merger, demerger or spin-off, provided that a document, subject to AMF scrutiny and containing information equivalent to that of the prospectus, is made available by the issuer ;

4° shares offered, allotted or to be allotted free of charge to shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document containing information on the number and nature of the financial instruments and the reasons for and details of the transaction is made available by the issuer ;

5° financial instruments offered, allotted or to be allotted to directors, company officers referred to in II of Article L. 225-197-1 of the Commercial Code to existing or former employees by their employer or by an affiliate, if these instruments are of the same class as those already admitted to trading on a regulated market in a Member State of the European Union or a State party to the EEA agreement and that a document containing information on the number and nature of the instruments and the reasons for and details of the transaction is made available by the issuer.

6 financial instruments referred to in Points 1° or 1° of Article L. 211-1 of the Monetary and Financial Code issued by any person or entity referred to in Article 211-1, other than a *société anonyme* (public limited company), a *société en commandite par actions* (limited partnership with share capital) or an equivalent corporate structure under foreign law, if the transaction has one of the characteristics referred to in 1 to 4 of Article 211-2.

Where appropriate, an AMF instruction shall stipulate the nature of the information referred to in this article.

### Article 212-5

The obligation to publish a prospectus does not apply when the following categories of financial instruments are admitted to trading on a regulated market :

1° shares representing, over a period of 12 months, less than 10 % (ten per cent) of the number of shares of the same class already admitted to trading on the same regulated market ;

2° shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, if the issuing of the new shares does not involve any increase in the issuer's capital ;

3° financial instruments offered in connection with an offre publique d'échange or an equivalent exchange procedure under foreign law, if a document, subject to AMF scrutiny and containing information equivalent to that of the prospectus, is made available by the issuer ;

4° financial instruments offered, allotted or to be allotted in connection with a merger, demerger or spin-off that has been subject to the procedure in Article 212-34 ;

5° shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document containing information on the number and nature of the shares and the reasons for and details of the offer is made available by the issuer ;

6° financial instruments offered, allotted or to be allotted to directors, company officers referred to in II of Article L. 225-197-1 of the Commercial Code to existing or former employees by their employer or by an affiliate, if these instruments are of the same class as those already admitted to trading on the same regulated market and that a document containing information on the number and nature of the instruments and the reasons for and details of the transaction is made available by the issuer.

7° shares resulting from the conversion or exchange of other financial instruments or from the exercise of rights conferred by other financial instruments, provided that the said shares are of the same class as those already admitted to trading on a regulated market ;

8° financial instruments already admitted to trading on another regulated market, on the following conditions :

- a) that these financial instruments or financial instruments of the same class have been admitted to trading on that other regulated market for more than 18 months ;
- b) that, for financial instruments first admitted to trading on a regulated market after the date of entry into force of this Chapter, the admission to trading on that other regulated market was associated with the approval of a prospectus made available to the public in accordance with Articles 212-26 and 212-27 ;
- c) that, for financial instruments not mentioned in b) and first admitted to trading after 30 June 1983 and before the entry into force of this Chapter, a prospectus has been approved pursuant to this Regulation, in the version in force before 9 September 2005 ;
- d) that the issuer has fulfilled all the periodic and ongoing disclosure obligations on this other regulated market ;
- e) the person applying for admission shall prepare a summary in French that is published and circulated in accordance with Article 212-27. The French translation of the summary is not needed if the admission concerns the compartment referred to in Article 516-18. The summary shall also state where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to d) is available.

Where appropriate, an AMF instruction shall stipulate the nature of the information referred to in this article.

## **Section 2 - Filing, approval and circulation of prospectuses**

### **SUB-SECTION 1 - FILING AND APPROVAL OF THE PROSPECTUS**

#### **Paragraph 1 - Filing**

##### **Article 212-6**

Persons or entities mentioned in Article 211-1, or any person or entity acting on their behalf, shall file a draft prospectus with AMF.

The documentation needed to scrutinise the dossier shall be submitted to the AMF when the draft prospectus is filed. The content of this documentation shall be specified in an AMF instruction.

When filing the draft prospectus, the persons or entities referred to in the first paragraph shall specify whether the financial instruments concerned are admitted to trading on a regulated market having its registered office in a Member State of the European Community or a State party to the EEA agreement or are admitted to the official list of a foreign exchange and whether a listing application or an issue is pending or planned for other exchanges.

## Paragraph 2 - Prospectus content

### Article 212-7

The prospectus shall contain all the information which, depending on the particular nature of the issuer and of the relevant financial instruments, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor of the relevant financial instruments, as well as the rights attaching to such financial instruments and the conditions in which the instruments are issued.

This information shall be presented in an easily analysable and comprehensible form.

The prospectus shall be drawn up in accordance with one of the formats and modules in Articles 4 to 20 of Regulation (EC) no. 809/2004 of 29 April 2004 or one of the combinations in Article 21 of the Regulation for the different categories of financial instrument. The prospectus shall contain the information specified in Annexes I to XVII of the Regulation, depending on the type of issuer and the category of financial instruments concerned. For the purposes of the Regulation, the AMF shall take into account the recommendations of the Committee of European Securities Regulators.

### Article 212-8

I. - The prospectus shall include a summary note, except where the application for admission to trading on a regulated market concerns debt securities with a minimum denomination of EUR 50,000 or the foreign currency equivalent.

II. - The summary note shall, in a brief manner and in non-technical language, convey the essential characteristics and main risks associated with the issuer, any guarantor and the relevant financial instruments.

III. - The summary note shall also contain a warning that :

1° it should be read as an introduction to the prospectus ;

2° any decision to invest in the relevant financial instruments should be based on consideration of the prospectus as a whole by the investor ;

3° where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States of the European Community or States party to the EEA agreement, have to bear the costs of translating the prospectus before the legal proceedings are initiated ;

4° civil liability attaches to the persons who presented the summary note, and any translation thereof, and who requested notification within the meaning of Article 212-41 only if the summary note is misleading, inaccurate or inconsistent when read with other parts of the prospectus.

### Article 212-9

I. - The prospectus may be drawn up as a single document or separate documents.

II. - A prospectus composed of separate documents shall include :

1° a registration document or, for the initial listing of the financial instruments mentioned in Point 1°, Section I of Article L. 211-1 of the Monetary and Financial Code, a base document containing information about the issuer ;

2° a securities note containing information on the relevant financial instruments ;

3° the summary note mentioned in Article 212-8.

### Article 212-10

For a public offering of financial instruments, an issuer that has a registration document registered with or approved by the AMF is required to draw up only a securities note and a summary note.

If there has been a material change or recent development which could affect investors' assessments since the approval of the latest updated registration document or any supplemental note to the prospectus that has been prepared in accordance with Article 212-25, the securities note shall provide information that would normally be provided in the registration document.

The securities note and the summary note shall be submitted for approval by the AMF.

Where an issuer has filed only a registration document without having it approved by the AMF, the entire documentation, including updated information, shall be subject to AMF approval.

**Article 212-11**

Information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents, referred to in Article 28 of Regulation (EC) no. 809/2004 of 29 April 2004, approved by or filed with the AMF. This information shall be the latest available to the issuer. The summary note shall not incorporate information by reference.

When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to easily identify specific items of information.

**Paragraph 3 - Language used for the prospectus****Article 212-12**

I. - Where financial instruments referred to in Sections I and IV of Article L. 621-8 of the Monetary and Financial Code are issued or disposed of only in France or in one or more other Member States of the European Community or States party to the EEA agreement, including France, the prospectus approved by the AMF shall be drawn up in French.

By way of derogation, the prospectus may be drawn up in a language other than French that is customary in the sphere of finance in the following cases :

1° the issue or disposal involves financial instruments mentioned in Section II of Article L. 621-8 and takes place only in France or in one or more other Member States of the European Community or States party to the EEA agreement, including France ;

2° the issuer has its registered office in a non-EEA State and the prospectus is drawn up for an issue of financial instruments that is open to employees working for affiliates or establishments in France.

Where the prospectus is drawn up in a language other than French that is customary in the sphere of finance, the summary note shall be translated into French.

II. - Where admission to trading on a regulated market is planned solely in France or in one or more other Member States of the European Community or States party to the EEA agreement, including France, the prospectus approved by the AMF shall be drawn up in French or another language customary in the sphere of finance. In the latter case, the summary must be translated into French except when applying for admission to trading on the compartment referred to Article 516-18.

Where admission to trading on a regulated market is planned in France for debt securities with a minimum denomination of EUR 50,000 or the foreign currency equivalent, the prospectus approved by the AMF shall be drawn up in French or another language customary in the sphere of finance.

III. - Where a public offering of financial instruments is planned in one or more Member States of the European Community or States party to the EEA agreement, excluding France, the prospectus approved by the AMF shall be drawn up in French or another language customary in the sphere of finance.

IV. - Where the AMF is not the competent authority to approve the prospectus and where a public offering of financial instruments is planned solely in France or in one or more other Member States of the European Community or States party to the EEA agreement, including France, the prospectus shall be drawn up and published in French or another language customary in the sphere of finance. In the latter case, the summary must be translated into French except when applying for admission to trading on the compartment referred to Article 516-18.

**Paragraph 4 - Registration document****Article 212-13**

1° All issuers of financial instruments admitted for trading on a regulated market may prepare a registration document every year, as specified in an AMF instruction.

This registration document can take the form of an annual report to shareholders. In this case, a table showing the concordance between the headings in the instruction mentioned in the first paragraph and the corresponding headings in the annual report shall be provided.

2° The registration document shall be filed with the AMF. If the issuer has not previously submitted three consecutive registration documents to the AMF, this document shall be registered by the AMF before it is published.

3° The registration document shall be made available to the public free of charge on the day after filing, or registration where such is the case. Any person who so requests may view the document at any time at the

registered office of the issuer or the offices of the paying agent. A copy of the document must be sent free of charge to any person who requests one.

The electronic version of the registration document shall be sent to the AMF for posting on its website.

4° Once the registration document has been published, the issuer can make regular updates, which are filed with the AMF in accordance with Point 2°, concerning published accounting data and new factors relating to its organisation, business, risks, financial condition and results.

These successive updates are made available to the public in accordance with Point 3°.

5° Where, in connection with its supervisory duties, the AMF finds an omission or a material inaccuracy in the registration document, it shall inform the issuer, which must amend the document and file the corrections with the AMF.

These corrections shall be made available to the public as soon as possible, in accordance with Point 3°.

Any omission or inaccuracy, with regard to this General Regulation or to AMF instructions, that could manifestly distort an investor's assessment of the organisation, business, risks, financial condition or results of the issuer shall be considered as material.

Any other observations made by the AMF shall be brought to the attention of the issuer, which shall take them into account in the subsequent registration document.

6° Where the registration document filed with or registered by the AMF is published within four months of the financial year-end and contains information referred to in *a* and *e* of point 2° of Article 221-1, the issuer is not required to publish this information separately.

7° Where an updated registration document is published within two months of the end of the first half-year or within forty-five days of the end of the first or third quarters of the financial year and where it contains information referred to in *b* or *c* of point 2° of Article 221-1, the issuer is not required to publish this information separately.

8° To qualify for the publication waivers referred to in VI and VII, the issuer shall publish a news release, in accordance with Article 221-3, explaining how the registration document and its updates are to be made available.

#### **Paragraph 5 - Responsibility attaching to participants : Issuers, statutory auditors and investment services providers**

##### **Article 212-14**

The persons responsible shall be clearly identified in the prospectus by their names and functions or, in the case of legal persons, their business names and registered offices.

The signature of the persons or entities responsible for the prospectus or registration document and for the updates and corrections thereto shall be preceded by a declaration confirming that, to the best of their knowledge, the information contained therein is in accordance with the facts and makes no omission likely to affect its import.

This declaration shall also state that the issuer has obtained a completion letter from its statutory auditors confirming that they have applied their professional standard for checking prospectuses, which consists in examining the entire document. Where appropriate, the issuer shall mention any material observations made by the statutory auditors.

The provisions of the third paragraph of this article shall not apply to prospectuses prepared for admission to a regulated market in financial instruments referred to in Point 2° of Section I of Article L. 211-1 of the Monetary and Financial Code or for admission of financial instruments to the compartment referred to Article 516-18.

##### **Article 212-15**

I. - The statutory auditors shall state whether the interim, consolidated or annual financial statements that have undergone an audit or a limited review and that are presented in a prospectus, a registration document or, where such is the case, the updates or corrections thereto, give a true and fair view of the issuer. Where the interim financial statements are summary versions, the statutory auditors shall give their opinion on whether those statements comply with generally accepted accounting principles.

They shall declare that any forward-looking information, whether estimated or pro forma, presented in a prospectus, registration document or, where such is the case, the updates or corrections thereto, has been properly prepared in accordance with the indicated basis and that the accounting basis is consistent with the issuer's accounting policies.

II. - They shall examine all the other information in a prospectus, registration document or, where such is the case, the updates or corrections thereto. This overall examination and any special verifications shall be carried out in

accordance with a standard issued by the national institute of statutory auditors (Compagnie Nationale des Commissaires aux Comptes) on prospectus verification.

They shall draw up a completion letter for their work on the prospectus, in which they inform the issuer about the reports appearing in the prospectus, registration document or, where such is the case, the updates or corrections thereto. Upon completion of their overall examination and any special verifications that may have been made in accordance with the aforementioned professional standard, they shall state their observations, if any. The issue date of this completion letter must coincide as closely as possible with the date of the expected AMF approval.

The issuer shall forward a copy of the completion letter to the AMF before the AMF issues its approval or before the registration document or the updates and corrections thereto are filed or registered. If the letter contains observations, the AMF shall take appropriate action when scrutinising the prospectus.

In case of difficulty, the statutory auditors of a French issuer can approach the AMF with any questions about financial information in a prospectus, a registration document or, where such is the case, the updates or corrections thereto.

III. - The provisions of Section II shall not apply to prospectuses prepared for admission to a regulated market in financial instruments referred to in Point 2° of Section I of Article L. 211-1 of the Monetary and Financial Code or for admission of financial instruments to the compartment referred to Article 516-18.

#### **Article 212-16**

Where one or more investment services providers take part in the first admission to trading on a regulated market of financial instruments mentioned in Point 1°, Section I of Article L. 211-1 of the Monetary and Financial Code or in any offering of such financial instruments during the first three years after the first admission of equity securities, such investment services provider(s) shall certify to the AMF that they have exercised customary professional diligence and found no inaccuracies or material omissions likely to mislead investors or affect their judgement.

During the three years following the first admission to trading of an issuer's securities, where the prospectus prepared for the offering comprises a registration document or a recent prospectus and a securities note, the investment services provider(s) shall certify only the information in the securities note, provided the information in the registration document or recent prospectus has been certified by such provider(s) or another investment services provider, exercising customary professional diligence, before the offering.

After three years, the investment services provider(s) shall certify only the details of the transaction and the characteristics of the relevant financial instruments, as described in the prospectus or the securities note, as the case may be.

Where one or more investment services providers take part in any public offering of the financial instruments referred to in Point 1°, Section I of Article L. 211-1 of the Monetary and Financial Code that are not admitted to trading, such investment services provider(s) shall certify to the AMF that they have exercised customary professional diligence and found no inaccuracies or material omissions likely to mislead investors or affect their judgement.

Where one or more entities, whether or not they are investment services providers, that are authorised by a market operator or an investment services provider which runs an organised multilateral trading facility (MTF), within the meaning of Article 524-1, take part through that MTF in a public offering of the financial instruments referred to in Point 1°, Section I of Article L. 211-1 of the Monetary and Financial Code, such entities shall certify to the AMF that they have exercised customary professional diligence and found no inaccuracies or material omissions likely to mislead investors or affect their judgement.

In the case referred to in the above paragraph, where customary professional diligence is exercised by persons or entities that are not accredited as investment services providers, the investment services providers that are likely to take part in the offering are not required to certify to the AMF that such diligence has been exercised.

The certification shall be submitted to the AMF before its issues its approval.

This article does not apply to prospectuses prepared for admission of financial instruments to the compartment referred to Article 516-18.

#### **Paragraph 6 - Adapting the contents of the prospectus**

#### **Article 212-17**

Where the final issue price or disposal price and the final amount of relevant financial instruments cannot be included in the prospectus, the issuer shall mention in the prospectus :

1° the criteria or the conditions in accordance with which the above elements will be established ; or

2° the maximum price of the transaction.

The final price and amount of relevant financial instruments shall be filed with the AMF and published in accordance with Article 212-27.

Where one of the elements mentioned in Point 1° or Point 2° is not mentioned in the prospectus, investors must be entitled to withdraw their acceptance of or subscription for the financial instruments during at least two trading days following the publication of the final price and amount of financial instruments concerned.

#### **Article 212-18**

Under AMF supervision, certain information may be omitted from the prospectus in the following cases :

1° disclosure of such information would be contrary to the public interest ;

2° disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public ;

3° such information is of minor importance for the envisaged transaction, and is not such as will influence the assessment of the financial condition and prospects of the issuer of the guarantor, if any, of the relevant financial instruments.

#### **Article 212-19**

Without prejudice to the adequate information of investors, the contents of the prospectus may be adapted, in exceptional circumstances and under AMF supervision, if some of the items prove to be inappropriate to the nature of the financial instruments concerned, or to the business or legal form issuer, on condition that equivalent information is provided. If there is no such equivalent information, the issuer shall be authorised, under AMF supervision, to omit the items in question from the prospectus.

### **Paragraph 7 - Conditions for issuance of approval**

#### ***Subparagraph 1 - General provisions***

#### **Article 212-20**

Where the requirements of this Chapter have been met, and particularly where the AMF has received the confirmations from the participants in the transaction, the AMF shall issue its approval.

Before issuing its approval, the AMF may request additional investigations from the statutory auditors or ask for an audit to be carried out by an external specialist, appointed with its agreement, if it considers that the statutory auditors have not exercised due care.

#### **Article 212-21**

The documentation needed to scrutinise the dossier shall be submitted to the AMF when the draft prospectus is filed. The content of this documentation shall be specified in an AMF instruction.

If the dossier is incomplete, the AMF shall so inform the person that filed the draft prospectus, within ten trading days of such filing. Once the dossier is complete, the AMF shall, within the same time limit, send the issuer a notice of filing which, where appropriate, can be an acknowledgment of receipt.

The AMF announces its approval within ten trading days of issuing the notice of filing or acknowledgement of receipt, as the case may be.

For a public offering of financial instruments, where the issuer has drawn up a registration document and registered it in accordance with Article 212-13, it shall file a securities note in accordance with an AMF instruction no later than five trading days before the proposed date for obtaining approval for the transaction.

If, when scrutinising the dossier, the AMF states that the documents are incomplete or that additional information must be incorporated, the time limits mentioned in the third and fourth paragraphs shall commence only when the AMF has received the missing or additional information.

***Subparagraph 2 - Provisions applicable to a first public offering of financial instruments or first admission to trading on a regulated market or on an organised multilateral trading facility***

**Article 212-22**

Article 212-21 shall not apply to a first public offering of financial instruments.

The documentation needed to scrutinise the dossier shall be submitted to the AMF when the draft prospectus is filed. The content of this documentation shall be specified in an AMF instruction.

If the dossier is incomplete, the AMF shall so inform the person that filed the draft prospectus, at the earliest opportunity. If the dossier is complete, the AMF shall send the issuer a notice of filing.

The AMF shall announce its approval within twenty trading days of issuing the notice of filing.

If, when scrutinising the dossier, the AMF states that the documents are incomplete or that additional information must be incorporated, the time limit mentioned in the fourth paragraph shall commence only when the AMF has received the missing or additional information.

**Article 212-23**

1° For the first admission of financial instruments referred to in Point 1°, Section I of Article L. 211-1 of the Monetary and Financial Code to trading on a regulated market or a multilateral trading facility referred to in Article 524-1, the issuer shall be authorised to draw up a base document.

2° The issuer or any person or entity acting on its behalf shall file the draft base document with the AMF at least twenty trading days before the proposed date for obtaining approval for this transaction.

3° The filing shall be accompanied by the documentation specified in an AMF instruction. If the dossier is incomplete, the AMF shall so inform the issuer at the earliest opportunity. If the dossier is complete, the AMF shall send the issuer a notice of filing.

4° The AMF shall register the base document, as specified in an AMF instruction. It shall send the issuer a registration notice, which it shall also post on its website.

5° The issuer shall disseminate the base document as soon as it has been notified of the registration notice as specified in Article 212-27. It may, however, take it upon itself to delay dissemination provided it refrains from disclosing any material information in the base document to persons not subject to a confidentiality or secrecy obligation. Accordingly, online publication of the registration notice, as provided for in Point 4°, shall be delayed for as long as confidentiality is maintained.

In any case, the base document shall be disseminated no later than five trading days before the proposed date for obtaining approval for the transaction.

6° For the admission to trading of financial instruments, the issuer shall file a draft securities note no later than five trading days before the proposed date for obtaining approval for the transaction.

If there has been a material change or recent development that could affect investors' assessments since the registration of the base document, the securities note shall provide the information that would normally be provided in the base document.

**Paragraph 8 - Existence of a recent prospectus**

**Article 212-24**

I. - The prospectus shall be valid for other transactions for a period of twelve months after publication provided it has been completed by the supplements stipulated in Article 212-25.

II. - The registration document, previously filed, shall be valid for a period of twelve months provided it has been updated in accordance with Article 222-7.

The registration document accompanied by the securities note, updated if applicable in accordance with Article 212-10, and the summary note shall be considered to constitute a valid prospectus.



## Paragraph 9 - Supplement to the prospectus

### Article 212-25

I. - Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus that could materially affect the assessment of the financial instruments and that arises or is noted between the time that approval is obtained and the closing of the transaction shall be mentioned on a supplement to the prospectus, which shall be subject to AMF approval.

The AMF shall issue its approval within seven trading days, as specified in Articles 212-20 to 212-23.

The document shall be published and disseminated with the same arrangements as were applied when the initial prospectus was published.

The summary note, and any translation thereof, shall also be supplemented, if necessary, to take into account the new information included in the supplement.

II. - Investors who have already agreed to purchase or subscribe for financial instruments before the supplement is published shall have the right, exercisable within a time limit that shall be no shorter than two trading days after the publication of the supplement, to withdraw their acceptances.

## SUB-SECTION 2 - DISSEMINATION OF THE PROSPECTUS, ADVERTISEMENTS

### Paragraph 1 - Dissemination of the prospectus

#### Article 212-26

Once approval has been issued, the prospectus shall be filed with the AMF and made available to the public by the issuer or the person or entity asking for admission to trading on a regulated market.

The prospectus shall be disseminated to the public as soon as practicable and, in any case, at a reasonable time in advance of and, at the latest, at the beginning of, the transaction.

In the case of a first admission to trading on a regulated market, the prospectus shall be disseminated to the public at least six trading days before the end of the offer.

#### Article 212-27

I. - In practice, the prospectus shall be disseminated in one of the following ways :

1° by publication in one or more newspapers with nationwide circulation or widely circulated ;

2° by being made available free of charge from the issuer at its registered office, from the undertaking that operates the market on which the financial instruments are admitted to trading, and from the financial intermediaries placing or trading the instruments, including paying agents ;

3° by posting on the website of the issuer and, if applicable, on the website of the financial intermediaries placing or trading the instruments, including paying agents ;

4° by posting on the website of the regulated market where the admission to trading is sought.

II. - Issuers that publish their prospectus in accordance with Point 1° or Point 2° of Section I shall also publish it on their website.

Issuers that publish their prospectus in accordance with Point 2° to Point 4° of Section I shall also publish the summary of the prospectus in accordance with Point 1° of Section I or a press release disseminated in accordance with Article 221-3, which specifies how the prospectus is to be made available.

III. - Where the prospectus is disseminated in accordance with Point 3° or Point 4° of Section I, a copy of the prospectus shall be sent free of charge to any person who requests one.

IV. - The electronic version of the prospectus shall be sent to the AMF for posting on its website.

#### Article 212-27-1

The prospectus and the supplement published and made available to the public shall always be identical to the original versions approved by the AMF.

## Paragraph 2 - Advertisements

### Article 212-28

Any advertisement, regardless of its form and method of dissemination, that relates to a public offering of financial instruments shall be communicated to the AMF before being disseminated.

The above advertisements shall :

- 1° state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it ;
- 2° be clearly recognisable as advertisements ;
- 3° contain no false or misleading statements ;
- 4° contain information that is consistent with the information in the prospectus, if already published, or with information required to be in the prospectus, if the prospectus is published afterwards ;
- 5° contain a notice alerting the public of the section of the prospectus dealing with "risk factors" ;
- 6° where applicable and at the request of the AMF, contain a warning about certain exceptional characteristics of the issuer, the guarantors, if any, or the relevant financial instruments.

### Article 212-29

All information about a public offering of financial instruments that is disclosed in oral or written form shall be consistent with the information in the prospectus.

### Article 212-30

When no prospectus is required pursuant to this Title, material information provided by an issuer and addressed to qualified investors, as defined by Articles D. 411-1, D. 411-2, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the Monetary and Financial Code, or to special categories of investors, including information disclosed in the context of meetings relating to the disposal or issuance of financial instruments, shall be disclosed to all qualified investors of special categories of investors to whom the offer is addressed.

Where a prospectus is required to be published, such information shall be included in the prospectus or in a supplement to the prospectus in accordance with Article 212-25.

## Section 3 - Special cases

### Paragraph 1 - Base prospectus

#### Article 212-31

An offering programme means a programme that permits the issuance of non-equity securities, including warrants in any form and having a similar category, in a continuous or repeated manner during a specified issuing period.

#### Article 212-32

For the types of financial instruments hereafter, the prospectus may consist of a base prospectus containing all relevant information about the issuer and the relevant financial instruments :

- 1° debt securities, including warrants in any form, issued under an offering programme ;
- 2° debt securities issued in a continuous or repeated manner by credit institutions :
  - a) where the sums deriving from the issue of the said securities are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date ;
  - b) where, in the event that the related credit institution is unable to meet its current liabilities, the sums referred to in a) are intended to repay the capital and interest falling due, without prejudice to the provisions of Articles L. 613-25 to L. 613-31-10 of the Monetary and Financial Code.

The information given in the base prospectus shall be supplemented, if necessary, with updated information on the issuer and on the relevant financial instruments, in accordance with Article 212-25.

If the final terms of the issue or disposal are not included in either the base prospectus or supplemental note, the final terms shall be provided to investors and filed with the AMF for each issue or disposal, as soon as practicable

and if possible in advance of the beginning of the issue or disposal. In this case, the provisions of Point 1° of Article 212-17 shall be applicable.

#### **Article 212-33**

In the case of an offering programme, the base prospectus, previously filed, shall be valid for 12 months.

In the case of the financial instruments referred to in Point 2° of Article 212-32, the base prospectus shall be valid until no more of the instruments concerned are issued in a continuous or repeated manner.

### **Paragraph 2 - Merger, demerger, partial merger**

#### **Article 212-34**

1° Two months before the scheduled date of an extraordinary general meeting called to authorise an issue of financial instruments relating to a merger, demerger or partial merger, the issuer may file with the AMF the document prepared for that meeting. Where the document contains information equivalent to that specified in an AMF instruction, it is registered by the AMF.

2° The document provided for in Point 1° shall be published and distributed in accordance with Articles 212-26 and 212-27 fifteen days for partial mergers, or one month for mergers and demergers, before the date of the extraordinary general meetings called to authorise the transaction.

3° Where the application for admission is made more than one year after a merger, demerger or partial merger that entailed the preparation of a document registered by the AMF, the issuer that is to prepare a listing prospectus may refer to the registered document for the description of the merger, demerger or partial merger.

4° Documents pertaining to a merger, demerger or partial merger are made available free of charge to any person who so requests for viewing at the registered office of the issuer or the offices of the paying agent.

### **Paragraph 3 - Offers of financial instruments with embedded debt securities**

#### **Article 212-35**

I. - The AMF may request that an issue be rated by a specialised agency when it examines a prospectus for the admission to trading on a regulated market of, or for the issuance of, financial instruments with embedded debt securities, particularly where these financial instruments are intended to be widely distributed to the public.

II. - The AMF may request all appropriate guarantees when it examines a prospectus for the admission to trading on a regulated market of, or for the issuance of, financial instruments with embedded debt securities.

The guarantee contract shall be made available free of charge to any person who so requests for viewing at the registered office of the issuer or the offices of the paying agent ; a copy of the document shall be provided free of charge to any interested party.

### **Paragraph 4 - Issuers having their registered office outside the European Economic Area**

#### **Article 212-36**

Issuers having their registered office in a State not party to the EEA agreement may draw up a prospectus meeting the standards of the International Organisation of Securities Commissions and containing information equivalent to that required under this Title and Article 222-7. In this case, Article 212-37 shall apply.

#### **Article 212-37**

Issuers having their registered office in a State not party to the EEA agreement shall appoint, with the assent of the AMF, a statutory auditor to verify the translation of the financial statements and notes as well as the relevance of any supplements and adaptations. This statutory auditor shall prepare a completion letter for its work on the translation of the financial statements and the relevance of the supplements and adaptations, in accordance with Article 212-15.

These provisions do not apply to prospectuses prepared for admission of financial instruments to the compartment referred to Article 516-18.

**Article 212-38**

In preparation for the first admission to trading on a regulated market of securities from an issuer having its registered office in a State not party to the European Economic Area Agreement, the draft prospectus should be submitted to the AMF with a document containing all of the relevant information that the issuer published or made available to the public over the preceding 12 months in the State where its registered office is located, along with a timetable of upcoming publications and the topics of the issuer's communications over the two months following the draft prospectus submission date.

**Section 4 - Offers in several member States of the European Community or States party to the European Economic Area agreement****SUB-SECTION 1 - ISSUANCE BY THE AMF OF AN APPROVAL CERTIFICATE****Article 212-39**

At the request of the issuer or the person responsible for preparing the prospectus, the AMF shall issue the supervisory authorities of the other Member States of the European Community or States party to the EEA agreement with an approval certificate declaring that the prospectus has been drawn up in accordance with Directive 2003/71/EC of 4 November 2003, along with a copy of the said prospectus. This shall be done within three trading days of that request or, if the request is submitted with the draft prospectus, within one day of issuance of approval. The same procedure shall apply to any supplemental note to the prospectus.

Where such is the case, the certificate shall mention and justify the application of Articles 212-18 and 212-19.

**SUB-SECTION 2 - VALIDITY OF THE PROSPECTUS APPROVED BY THE COMPETENT SUPERVISORY AUTHORITY OF ANOTHER MEMBER STATE OF THE EUROPEAN COMMUNITY OR A STATE PARTY TO THE EUROPEAN ECONOMIC AREA AGREEMENT****Article 212-40**

Without prejudice to Article L. 621-8-3 of the Monetary and Financial Code, when a public offering of financial instruments is planned in one or more Member States of the European Community or States party to the EEA agreement, including France, the prospectus approved by the competent supervisory authority of another Member State of the European Community or a State party to the EEA agreement shall be valid for a public offering of financial instruments in France, provided that the AMF receives the notification provided for in Article 212-41.

**Article 212-41**

Where the AMF receives notification of a prospectus approved by the competent supervisory authority of another Member State of the European Community or a State party to the EEA agreement, it shall ensure that the prospectus is drawn up in French or another language customary in the sphere of finance and the issuer produces the French translation of the summary note.

**Article 212-42**

If significant new factors, material mistakes or inaccuracies arise after the approval of the prospectus by the competent supervisory authority of another Member State of the European Community or a State party to the EEA agreement, the AMF may draw that authority's attention to the need for new information.

**CHAPTER III - TRANSACTIONS IN DERIVATIVE FINANCIAL INSTRUMENTS****Article 213-1**

Before the issuance or disposal of derivative financial instruments in accordance with Point 1°, Section II of Article L. 211-1 of the Monetary and Financial Code, the issuer or its guarantor shall prepare the registration document referred to in Article 212-13, an offer document describing the transactions in the financial instruments and their shared characteristics, and a term sheet for each class of instrument. The offer document and term sheet shall be submitted to the AMF for approval.

The AMF can draft a warning and ask that it appear on the offer document or term sheet.

The waivers provided for in Article 212-4 shall apply.

The offer document and term sheet shall be drafted in French and filed with the AMF at least fifteen trading days before the envisaged date for obtaining approval. They shall show the name and job title of the person(s) who

prepared them. These persons shall declare that, to the best of their knowledge, the information in the offer document and term sheet is in accordance with the facts and there are no omissions likely to affect their import.

## **CHAPTER IV - RIGHT OF THE AMF TO SUSPEND, PROHIBIT OR OPPOSE PUBLIC OFFERINGS OF FINANCIAL INSTRUMENTS**

### **Section 1 - Right of suspension**

#### **Article 214-1**

The AMF can suspend the transaction for no more than ten consecutive trading days each time that it has reasonable grounds to suspect that the transaction infringes applicable laws and regulations.

### **Section 2 - Right of prohibition**

#### **Article 214-2**

The AMF may order a prohibition where :

- 1° it has reasonable grounds to suspect that an issue or disposal infringes applicable laws and regulations ;
- 2° it observes that a proposed admission to trading on a regulated market infringes applicable laws and regulations.

### **Section 3 - Right of the AMF to oppose admission to trading on a regulated market**

#### **Article 214-3**

The AMF shall oppose the admission of financial instruments to trading on a regulated market if it considers that admission would engender risks that are incompatible with investors' interests and market integrity. It shall oppose the delisting of financial instruments on the same grounds.

The AMF shall similarly oppose any material change to the characteristics of derivative financial instruments admitted to trading.

#### **Article 214-4**

The AMF shall oppose the admission of financial instruments other than derivative financial instruments if it considers that, having regard to laws and regulations and to the professional standards applicable to statutory auditors, there are serious shortcomings in financial statements, that the issuer's statutory auditors have not exercised due care, or that the independence of said auditors was manifestly impaired.

It shall also oppose the admission financial instruments other than derivative financial instruments if, for one year prior to admission, these instruments have been the subject of transactions benefiting persons enjoying undue privilege, as specified in an AMF instruction.

#### **Article 214-5**

The AMF shall inform the market operator of its opposition, and the reasons therefor, within five days of receipt of the referral.

## **CHAPTER V - RELINQUISHING PUBLIC ISSUER STATUS**

#### **Article 215-1**

Issuers that have acquired the status of public issuer can relinquish this status in the following conditions :

- 1° if the financial instruments referred to in Article L. 211-1 of the Monetary and Financial Code are not or are no longer traded on a regulated market ;
- 2° if the financial instruments referred to in Point 1° that have been offered to the public are in the hands of fewer than 100 persons ;
- 3° if the financial instruments referred to in Point 1° have not been offered to the public in the previous year or have been the subject of a mandatory buyout offer followed by a squeeze-out.

Relinquishment of public issuer status shall take effect from the date of publication of a notice in the official gazette (*Bulletin des annonces légales obligatoires*). This publication shall be followed within one month by a letter to each shareholder or the publication of a news release in a financial daily newspaper with nationwide circulation, under the issuer's responsibility.

## **CHAPTER VI - APPOINTMENT OF A CORRESPONDENT BY PERSONS OR ENTITIES HAVING THEIR REGISTERED OFFICE OUTSIDE FRANCE**

### **Article 216-1**

Persons or entities having their registered office outside France and having financial instruments admitted to trading on a regulated market shall appoint a correspondent in France, with whom they shall be domiciled and whom they shall authorise to :

1° receive any and all correspondence from the AMF ;

2° forward to the AMF all documents and information provided for in laws and regulations, or respond to requests for information from the AMF using the powers granted to it by laws and regulations.

Where their financial instruments were admitted to trading on a regulated market before this article came into force, the persons or entities concerned shall comply with the first paragraph before 1 September 2005.

## **CHAPTER VII - DESIGNATING THE AMF AS THE COMPETENT AUTHORITY TO SUPERVISE AN OFFER**

### **Article 217-1**

Any company mentioned in Part II of Article L. 433-1 of the Monetary and Financial Code that designates the AMF as the competent authority to supervise a takeover bid must send the AMF a statement to be posted on the AMF's website. This statement must reach the AMF no later than the first day on which the company's securities are admitted to trading on a regulated market.

The statement must follow the standard format set out in an AMF instruction.

## **CHAPTER VIII - SOUNDING OUT THE MARKET FOR FINANCIAL OFFERINGS**

### **Article 218-1**

When an investment services provider intends to poll the market in preparation for a primary market issue or for the placing, acquisition or sale of financial instruments, it seeks the prior agreement of the persons it intends to question. It informs them that if they agree to participate in the poll, they will receive inside information within the meaning of Article 621-1.

Authorised providers shall establish and maintain a procedure setting forth how the compliance officer is to be informed of the poll and, following the poll, of the names of the persons who agreed to respond thereto and the times and dates on which they were contacted.

## TITLE II - PERIODIC AND ONGOING DISCLOSURE OBLIGATIONS

### CHAPTER I - COMMON PROVISIONS AND DISSEMINATION OF REGULATED INFORMATION

#### Article 221-1

For the purposes of this title :

1° "issuer" means any legal entity or corporate body with publicly listed status or whose financial instruments are the underlying securities for a futures contract or for a financial instrument admitted to trading on a regulated market ;

2° Where the issuer's financial instruments are admitted to trading on a regulated market, "regulated information" means the following documents and information :

- a) the annual financial report referred to in Article 222-3 ;
- b) the half-yearly financial report referred to in Article 222-4 ;
- c) the quarterly financial reporting referred to in paragraph IV of Article L. 451-1-2 of the Monetary and Financial Code ;
- d) the reports referred to in Article 222-9 concerning the conditions for preparing and organising the work of the board of directors or the supervisory board and the internal control procedures put in place by issuers ;
- e) the news release concerning the fees paid to statutory auditors referred to in Article 222-8 ;
- f) information on the total number of voting rights and the number of shares making up the share capital referred to in Article 223-16 ;
- g) the description of the buyback programmes referred to in Article 241-2 ;
- h) the press release setting out the arrangements for supplying the prospectus referred to in Article 212-27 ;
- i) the information published in accordance with Article 223-2 ;
- j) a press release stipulating the procedures for supplying and accessing the information referred to in Article R. 225-83 of the Commercial Code ;
- k) the information published pursuant to Article 223-21 ;

Where none of the issuer's financial instruments is admitted to trading on a regulated market, "regulated information" means the documents and information referred to in *d, e, h and i*.

3° "person" means a natural person or a corporate body.

The provisions of this title also apply to the senior managers of the issuer, legal entity or corporate body concerned.

#### Article 221-2

I. - Where the AMF is the competent authority for monitoring compliance with the requirements relating to the information referred to in *a, b, c, f, i and k* of points 2° of Article 221-1, this information shall be drafted :

1° In French if the financial instruments are admitted to trading on a French regulated market.

However, in the cases referred to in II of Article 212-12, the following information may be drawn up in a language other than French that is customary in the sphere of finance:

- a) the information referred to in *a, b, c, f, i and k* of Point 2 of Article 221-1;
- b) the information referred to in *d, g, h and j* of Point 2 of Article 221-1, where the issuer has its registered office outside France and the financial instruments are admitted to trading on the compartment referred to Article 516-18.

2° In French or another language customary in the sphere of finance if the financial instruments are admitted to trading on a regulated market in a State, other than France, that is party to the European Economic Area agreement .

II. - Where the AMF is not the competent authority for monitoring the information referred to in paragraph I and where the financial instruments are admitted to trading on a French regulated market, that information shall be in French or another language customary in the sphere of finance.

III. - Notwithstanding point 5° of Article L. 451-1-4 of the Monetary and Financial Code, where the minimum denomination of the financial instruments is EUR 50,000 or the foreign currency equivalent, the regulated information to be supplied shall be in French or another language customary in the sphere of finance.

**Article 221-3**

I. - The issuer shall ensure that the regulated information defined in Article 221-1 is disseminated effectively and in full.

II. - The issuer shall post the regulated information on its website as soon as it has been disseminated. The information shall remain on the site for at least five years from the date of dissemination.

Where none of the issuer's financial instruments is admitted to trading on a regulated market, regulated information shall be deemed to have been fully and effectively disseminated, in accordance with paragraph I, if it is posted on the website.

**Article 221-4**

I. - This article applies to issuers whose financial instruments are admitted to trading on a regulated market and for which the AMF is the competent authority for controlling regulated information.

II. - Dissemination of regulated information is considered full and effective if it makes it possible to reach the widest possible audience in the shortest possible period of time between its being distributed in France and in the other Member States of the European Community or other States party to the European Economic Area (EEA) agreement.

Regulated information shall be transmitted in full to the media in a way that ensures secure transmission, minimises the risk of data corruption and unauthorised access, and allows total certainty as to the source of the transmitted information.

Regulated information shall be transmitted to the media in a way that clearly identifies the issuer concerned, the purpose of the regulated information and the date and time at which the issuer transmitted it.

The issuer shall rectify as quickly as possible any shortcomings or disruptions in the transmission of regulated information.

The issuer shall not be held liable for systemic defects or malfunctions affecting the media to which the regulated information has been transmitted.

III. - The issuer shall provide the AMF, on request, with the following :

1° the name of the person that transmitted the regulated information to the media ;

2° details of the security measures taken ;

3° the date and time at which the information was transmitted to the media ;

4° the means by which the information was transmitted ;

5° details of any embargo placed on the information by the issuer, where such is the case.

IV. - The issuer is deemed to have fulfilled the requirement referred to in paragraph I of Article 221-3 and the AMF filing requirement referred to in Article 221-5 when it transmits regulated information electronically to a primary information provider that follows the transmission procedures described in paragraph I and that is registered on a list published by the AMF.

V. - For the reports and information referred to in *a, b, c* and *d* of point 2° of Article 221-1, the issuer may distribute a news release, in accordance with the procedures provided for in this article, describing how such reports and information are to be made available. In this case, the provisions of paragraph I of Article 221-3 are waived.

VI. - The issuer shall also make a financial disclosure through the print media, at a frequency and in a presentation format that it considers appropriate to the type of financial instruments issued, its size and shareholder base, and the circumstances in which its financial instruments were admitted to the compartment referred to Article 516-18. This disclosure must not be misleading and must be consistent with the information referred to in paragraph I of Article 221-3.

**Article 221-5**

The regulated information is filed electronically with the AMF by the issuer at the same time as specified in an AMF instruction.

**Article 221-6**

The provisions of Articles 221-3 and 221-4 apply to issuers having financial instruments, as referred to in paragraphs I and II of Article L. 451-1-2 of the Monetary and Financial Code, that are admitted to trading solely on a regulated



market, even if the issuer has its registered office outside France and is not subject to the requirements of the above article.

## CHAPTER II - PERIODIC INFORMATION

### Section 1 - Financial and accounting Information

#### SUB-SECTION 1 - GENERAL PROVISIONS

##### Article 222-1

The provisions of this section apply to French issuers referred to in paragraph I of Article L. 451-1-2 of the Monetary and Financial Code.

They also apply :

1° to issuers referred to in point 1° or point 2° of paragraph II of Article L. 451-1-2 if they have chosen the AMF as the competent authority for monitoring compliance with the disclosure requirements stipulated therein. That choice is valid for three years, unless the financial instruments concerned are no longer admitted to trading on a market anywhere in a Member State of the European Community or a state party to the EEA agreement.

The choice takes the form of a statement published in accordance with Article 221-3 and filed with the AMF as provided in Article 221-5.

Where the issuer's financial instruments are no longer admitted to trading on a regulated market of a Member State of the European Community or a state party to the EEA agreement or where the issuer chooses another competent authority to monitor compliance with the disclosure requirements stipulated in Article L. 451-1-2, it informs the AMF thereof in accordance with the procedures described in the above sub-paragraph.

2° to issuers referred to point 3° of paragraph II of Article L. 451-1-2 when the first public issue of securities was made in France, subject to a subsequent election by the issuer where such issue was not made by the issuer itself.

##### Article 222-2

In the event of a change in the consolidation that affects the accounts by more than 25%, the issuer shall issue pro forma information pertaining at least to the current financial year, as specified in an AMF instruction.

These provisions do not apply when financial instruments are admitted to trading on the compartment referred to Article 516-18.

#### SUB-SECTION 2 - ANNUAL FINANCIAL REPORTS

##### Article 222-3

I. - The annual financial report referred to in paragraph I of Article L. 451-1-2 of the Monetary and Financial Code shall include :

1° the annual accounts ;

2° where applicable, the consolidated accounts prepared in accordance with Regulation (EC) 1606/2002 of 19 July 2002 on the application of international accounting standards ;

3° a management report containing at least the information referred to in Articles L. 225-100, L. 225-100-3 and the second sub-paragraph of Article L. 225-211 of the Commercial Code and, if the issuer is required to prepare consolidated accounts, in Article L. 225-100-2 of that Code ;

4° a statement made by the natural persons taking responsibility for the annual financial report, whose names and functions are clearly indicated, to the effect that, to the best of their knowledge, the accounts are prepared in accordance with the applicable set of accounting standards and give a true and fair view of the assets, liabilities financial position and profit or loss of the issuer and the undertakings in the consolidation taken as a whole, and that the management report includes a fair review of the development and performance of the business, profit or loss and financial position of the issuer and the undertakings in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face ;

5° the report of the statutory auditors on the annual accounts and, where applicable, the consolidated accounts.

II. - The issuer may include in the annual financial report referred to in paragraph I the news release concerning the statutory auditors' fees referred to in Article 222-8 and the reports referred to in Article 222-9. In this case, they are not required to publish this information separately.

### **SUB-SECTION 3 - HALF-YEARLY FINANCIAL REPORTS**

#### **Article 222-4**

The half-yearly financial report referred to in paragraph III of Article L. 451-1-2 of the Monetary and Financial Code shall include :

1° complete or condensed accounts for the past half-year, in consolidated form where necessary, prepared either under IAS 34 or in accordance with Article 222-5 ;

2° an interim management report ;

3° a statement made by the natural persons taking responsibility for the half-yearly financial report, whose names and functions are clearly indicated, to the effect that, to the best of their knowledge, the accounts are prepared in accordance with the applicable set of accounting standards and give a true and fair view of the assets, liabilities financial position and profit or loss of the issuer and the undertakings in the consolidation taken as a whole, and that the interim management report includes a fair review of the information referred to in Article 222-6 ;

4° the statutory auditors' report on the limited review of the aforementioned accounts. Where the legal provisions applicable to the issuer do not require a report from the statutory or regulatory auditors on the interim accounts, the issuer shall mention this in its report.

#### **Article 222-5**

I. - Where the issuer is not required to prepare consolidated accounts or apply international accounting standards, the interim accounts shall contain at least the following :

1° balance sheet ;

2° income statement ;

3° statement of changes in equity ;

4° cash flow statement ;

5° accounting policies and explanatory notes.

These accounts may be in condensed form and the explanatory notes may contain only a selection of the most material notes.

The condensed balance sheet and the condensed income statement shall show each of the headings and subtotals included in the most recent annual accounts of the issuer. Additional line items shall be included if, as a result of their omission, the half-yearly accounts would give a misleading view of the assets, liabilities, financial position and profit or loss of the issuer.

The explanatory notes shall include at least enough information to ensure the comparability of the condensed half-yearly accounts with the annual accounts, as well as sufficient information and explanations to ensure a reader's proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the income statement.

II. - For comparability, interim accounts shall contain the following :

1° the balance sheet as of the end of the interim period in question and the comparative balance sheet as of the end of the immediately preceding financial year ;

2° the income statement cumulatively for the first six months of the current financial year, with a comparative income statement for the comparable period of the immediately previous financial year and the income statement of the immediately previous financial year ;

3° the statement of changes in equity cumulatively for the first six months of the current financial year, with a comparative statement of changes in equity for the immediately preceding financial year ;

4° the cash flow statement cumulatively for the first six months of the current financial year, with a comparative cash flow statement for the immediately preceding financial year.

III. - The interim accounts shall be prepared on a consolidated basis if the accounts for the company's most recent financial were consolidated accounts.

IV. - If the earnings per share amount is published in the accounts for the financial year, it shall also be published in the interim accounts.

#### **Article 222-6**

I. - As a minimum requirement, the interim management report shall describe the material events that occurred in the first six months of the financial year and their impact on the interim accounts. It shall describe the principal risks and uncertainties for the remaining six months of the year.

II. - For issuers of shares, the half-yearly report shall also disclose, as major related parties' transactions, as a minimum, the following :

1° related parties' transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or the performance of the issuer during that period ;

2° any changes in the related parties' transactions described in the last annual report that could have a material effect on the financial position or performance of the issuer in the first six months of the current financial year.

Where the issuer of shares is not required to prepare consolidated accounts, it shall disclose, as a minimum, the related parties' transactions referred to in Point 10 of Article R. 233-14 of the Commercial Code.

### **SECTION 2 - OTHER INFORMATION**

#### **Article 222-7**

Within twenty days of distributing the annual financial report referred to in a of point 2° of Article 222-1, the issuers referred to in Article L. 451-1-1 of the Monetary and Financial Code shall file electronically with the AMF a document containing or mentioning all the information they have published or made public over the previous twelve months in one or more States party to the EEA agreement or in one or more third countries in order to fulfil their legal or regulatory obligations with respect to financial instruments, financial instrument issuers and financial instrument markets.

The document referred to in the first paragraph shall be made available free of charge to the public at the issuer's registered office. The document shall also be posted to the issuer's website. It may be included in the registration document referred to in Article 212-13 or the annual financial report referred to in a of point 2° of Article 221-1.

If the document refers to other information, it should specify where this information can be obtained.

#### **Article 222-8**

I. - Within four months of the end of their financial year, public issuers shall publish a news release specifying the fees paid to each of the statutory auditors responsible for auditing their financial statements and, where applicable, to the company through which those auditors carry out their duties, or to other professionals in the network to which that company belongs, wherever such network, composed of natural or legal persons, provides professional services or advice in accounting, financial statement auditing, non-statutory auditing, or consulting on legal, financial, tax, organisational or related matters, and directly or indirectly maintains relations within the network that establish a material and durable community of economic interest.

If the issuer prepares consolidated financial statements, the aforementioned fees shall be those paid by it and the other companies fully consolidated in those statements. As specified in an AMF instruction, fees paid for the statutory audit engagement and the formalities related directly thereto shall be distinguished from the fees paid for other services.

The above news release shall be published in accordance with Article 221-3.

II. - Section I shall not apply to issuers where their securities have gained admission to a regulated market in financial instruments referred to in Point 2° of Section I of Article L. 211-1 of the Monetary and Financial Code or admission of financial instruments to the compartment referred to Article 516-18.

#### **Article 222-9**

I. - Public limited companies (*sociétés anonymes*) making a public offer of securities shall publicly disclose, in accordance with Article 221-3, the reports mentioned in the last point of Articles L. 225-37, L. 225-68 and L. 225-235 of the Commercial Code no later than the day of filing of the report with the clerk of the commercial court mentioned in Article L. 225-100 of the Commercial Code.

Other French or foreign legal persons making a public offer of securities shall publicly disclose information about the matters mentioned in the last point of Articles L. 225-37 and L. 225-68 of the Commercial Code under the same conditions set forth in the preceding sentence, if they are required to file their financial statements with the clerk of

the commercial court. If they are not required to file, they shall make such disclosure once their statements for the preceding financial year have been approved.

The reports and information referred to in the first and second paragraphs shall be posted to the website of the legal person concerned.

II. - Whenever an issuer prepares a registration document pursuant to Article 212-13, that document shall include the reports and disclosures mentioned in Part I. In such case, the dissemination requirements of Part I do not apply.

### **Section 3 - Equivalence criteria for periodic information for issuers having their registered office outside the European Economic Area**

#### **Article 222-10**

Where the AMF exempts an issuer from the obligations set forth in Article L. 451-1-2, pursuant to Section VIII of Article L. 451-1-2 of the Monetary and Financial Code and Articles 222-11 to 222-16 herein, such issuer shall disseminate, keep and file the information deemed equivalent by the AMF, using the procedures defined in Articles 221-3 to 221-5.

#### **Article 222-11**

A State that is not party to the European Economic Area (EEA) agreement shall be regarded as setting requirements equivalent to those in Point 3 of I of Article 222-3 where, under the law of that State, the management report is required to include at least the following information :

1° a fair review of the development and performance of the business and of the position of the issuer, together with a description of the principal risks and uncertainties that it faces, so as to present a balanced and comprehensive analysis consistent with the size and complexity of the business ;

2° An indication of the important events that have occurred since the end of the financial year ;

3° Indications of the issuer's likely future development.

The analysis referred to in Point 1° shall, to the extent necessary for an understanding of the issuer's development, performance or position, include both financial and, where appropriate, non-financial key performance indicators relevant to the issuer's particular business.

#### **Article 222-12**

A State that is not party to the European Economic Area Agreement shall be regarded as setting requirements equivalent to those in Point 2° of I of Article 222-3 where, under the law of that State, the issuer :

1° Is not required to provide individual accounts for the parent company ;

2° Is required to provide consolidated financial statements including :

a) for issuers of shares, dividends computation and ability to pay dividends ;

b) for all issuers, where applicable, minimum capital and equity requirements and liquidity issues.

3° Must provide the AMF, at its request, with additional audited disclosures giving information on the individual accounts of the issuer as a standalone, relevant to the elements of information referred to under points (a) and (b) of 2°. This information may be drawn up under the accounting standards of the issuer's home country.

#### **Article 222-13**

A State that is not party to the European Economic Area Agreement shall be regarded as setting requirements equivalent to those in 2° of I of Article 222-3 with regard to individual accounts where, under the law of that State, the issuer is not required to provide consolidated financial statements under international accounting standards deemed to be applicable in the European Community under the terms of Article 3 of Regulation (EC) 1606/2002 and the national accounting standards of the country concerned which are equivalent to such standards.

If such financial information is not in line with those standards, it must be presented in the form of restated financial statements.

The individual accounts must be audited independently.

**Article 222-14**

A State that is not party to the European Economic Area Agreement shall be regarded as setting requirements equivalent to those in Article 222-6 where, under the law of that State, the issuer must provide a set of condensed financial statements and an interim management report that includes as a minimum :

- 1° A review of the period covered ;
- 2° Indications of the issuer's likely future development for the remaining six months of the financial year ;
- 3° For issuers of shares and if already not disclosed on an ongoing basis, major related parties' transactions.

**Article 222-15**

A State that is not party to the European Economic Area agreement shall be regarded as setting requirements equivalent to those in Point 4° of I of Article 222-3 and in Point 3° of Article 222-4 where, under the law of that State, one or more persons within the issuer take responsibility for the annual and half-yearly financial information, and in particular for the following :

- 1° The compliance of the financial statements with the applicable reporting framework or set of accounting standards ;
- 2° The fairness of the management review included in the management report.

**Article 222-16**

A State that is not party to the European Economic Area Agreement shall be regarded as setting requirements equivalent to those in IV of Article L. 451-1-2 of the Monetary and Financial Code where, under the law of that State, the issuer is required to publish quarterly financial reports.

**CHAPTER II - ONGOING DISCLOSURE****Section 1 - Obligation to inform the public****Article 223-1**

Information provided to the public must be accurate, precise and fairly presented.

**Article 223-2**

I. - Every issuer must disclose to the public as soon as possible any privileged information, as defined in Article 621-1, that directly concerns that issuer.

II. - The issuer may assume responsibility for deferring disclosure of privileged information in order to protect his legitimate interests, provided such non-disclosure is unlikely to mislead the public and provided the issuer is in a position to ensure confidentiality by controlling access to that information, in particular by :

- 1° implementing effective security measures to prevent access to that information by persons other than those who require access in order to perform their duties within the issuer ;
- 2° taking the necessary steps to ensure that every person granted access to that information is aware of the legal and regulatory obligations associated with such access and has been warned of the penalties imposed for unauthorised use or distribution of that information ;
- 3° introducing the necessary procedures to disclose that information immediately in the event the issuer has been unable to ensure confidentiality, without prejudice to the provisions of the second point of Article 223-3.

III. - The legitimate interests mentioned in II above may concern the following situations, among others :

- 1° Negotiations in progress or elements related thereto, if the act of making them public could affect the normal course or outcome of those negotiations. In particular, in cases where the issuer's financial viability is in grave and imminent danger, but the provisions of Book VI of the Commercial Code relating to distressed companies do not apply, disclosure may be deferred for a limited period if it could cause serious harm to the interests of existing or potential shareholders by compromising the outcome of negotiations aimed at ensuring the long-term financial recovery of the issuer.
- 2° Decisions taken or contracts approved by an issuer's executive body that require approval by another of the issuer's governing bodies to become effective, when the issuer's governance structure requires such separation of

powers, if disclosure before the approval by both bodies, combined with a simultaneous announcement that such approval is yet to be given, would be likely to prevent a fair assessment of those decisions or contracts by the public.

#### **Article 223-3**

Whenever an issuer, or a person acting in the name or for the account of the issuer, communicates privileged information to a third party in the ordinary course of that party's work, profession or duties, within the meaning of the third point of Article 622-1, the issuer or agent shall ensure that such information is fully disclosed to the public, either simultaneously, if the communication was intentional, or promptly, if it was unintentional.

The provisions of the preceding sentence do not apply when the person who receives the information is bound by an obligation of confidentiality imposed by law, regulation, bylaw or contract.

#### **Article 223-4**

Issuers shall refrain from providing privileged information combined with advertising or commercial materials relating to its activities in such a way that the public could be misled.

#### **Article 223-5**

Any material change concerning privileged information already made public shall be disclosed promptly, by the same means used for the initial disclosure.

#### **Article 223-6**

Any issuer or other person acting on the issuer's behalf that is preparing a financial transaction liable to have a significant impact in the market price of a financial instrument, or on the financial position and rights of holders of that financial instrument, must disclose the characteristics of the transaction to the public as soon as possible.

If confidentiality is temporarily necessary to carry out the transaction and if the person mentioned in the preceding sentence is able to ensure such confidentiality, he may assume responsibility for deferring disclosure of those characteristics.

#### **Article 223-7**

Where a person has publicly disclosed his intentions and subsequently his intentions no longer conform to his initial declaration, he is required to inform the public promptly of his new intentions.

#### **Article 223-8**

All issuers must ensure that the same information disclosed abroad is disclosed simultaneously in France in accordance with the provisions of Article 223-1.

#### **Article 223-9**

All the information mentioned in Articles 223-2 to 223-8 must be disclosed to the public in the form of a news release distributed in accordance with Article 221-3.

#### **Article 223-10**

The AMF may request that issuers and persons mentioned in Articles 223-2 to 223-8 publicly disclose, in a timely fashion, information that the AMF deems necessary for investor protection and orderly markets. Failing such publication, the AMF itself may disclose the information.

#### **Article 223-10-1**

Issuers must ensure equal and simultaneous access in France to the information sources and channels that the issuer or its advisers make available specifically to investment analysts, particularly with regard to corporate finance transactions.

## **Section 2 - Crossing of shareholding thresholds, declarations of intent and changes of intent**

### **SUB-SECTION 1 - MAJOR SHAREHOLDINGS**

#### **Article 223-11**

To calculate the shareholdings mentioned in Article L. 233-7 of the Commercial Code, the person required to provide the notification referred to in Part I of the aforementioned article shall take account of the shares and voting rights

that it holds as well as shares and voting rights assimilated thereto, pursuant to Article L. 233-9 of the said code, and determine the portion of capital and voting rights that it holds based on the total number of equities making up the share capital of the company and the total number of voting rights attached to these equities.

The total number of voting rights is calculated on the basis of all the equities to which voting rights are attached, including equities whose voting rights have been suspended.

#### **Article 223-12**

I. - Pursuant to Point 2° of Part II of Article L. 233-9 of the Commercial Code, the following shall not be treated as shares or voting rights held by the person required to provide the notification provided for in Part I of Article L. 233-7 of the aforementioned code: equities held in a portfolio managed by an investment service provider controlled by that person within the meaning of Article L. 233-3 of the Commercial Code in connection with an asset management service, if the provider is able to exercise the voting rights attached to these equities only on the instructions of its client or if it provides assurance that the asset management business is conducted separately from all other activities.

II. - Application of Part I of this Article and Point 1° of Part II of Article L. 233-9 of the Commercial Code shall be subject to the immediate submission of the following information to the AMF by the person required to provide the notification:

1° The list of the management companies or investment service providers, citing their competent supervisory authorities or, failing that, that no authority is responsible for their supervision, but without mentioning the issuers concerned;

2° A statement to the effect that the person required to provide the notification complies with the requirements of this article for each management company or investment service provider concerned.

Said person shall keep the list mentioned in Point 1° up to date.

III. - The person mentioned in Part II must be able to prove to the AMF at its demand that:

1° The person's organisational structures, along with those of the management company or the investment service provider, are set up in such a way that the provider exercises the voting rights independently and that the provider and the person required to provide the notification have established procedures and rules of conduct aimed at preventing the disclosure of information about the exercise of voting rights between said person and the management company or investment service provider;

2° The persons who set the procedures for exercising voting rights shall act independently;

3° If the person mentioned in Part II is a customer of the management company or the provider or if said person holds a share of the assets managed by the provider, there shall be a written agency agreement clearly establishing a mutually independent relationship between said person and the management company or the investment service provider.

IV. - The provisions of Article L. 233-9 of the Commercial Code shall not apply if the management company or the investment service provider is able to exercise voting rights only on the direct or indirect instructions of the person required to provide the notification mentioned in Point I the aforementioned Article L. 233-7 or of any other person controlled by that person within the meaning of the aforementioned Article L. 233-3.

For the purposes of this paragraph:

1° "Direct instruction" shall mean any instruction given by the person required to provide the notification or any person controlled by that person within the meaning of Article L. 233-3 of the Commercial Code, stipulating how the management company or the investment service provider should exercise the voting rights under given circumstances;

2° "Indirect instruction" shall mean any general or specific instruction given in any form by the person required to provide the notification or any person controlled by that person within the meaning of Article L. 233-3 of the Commercial Code that limits the discretion of the management company or the investment service provider in the exercise of the voting rights in order to serve the commercial interests of the person required to provide the notification or the controlled person.

#### **Article 223-12 -1**

Point II of Article L. 233-9 of the Commercial Code shall apply to investment providers whose registered offices are not located in States party to the European Economic Area Agreement and which would have been authorised under the terms of Article 5, paragraph 1 of Directive 85/611/EEC, or in the case of asset management, under the terms of Section A, Point 4 of Annex I to Directive 2004/39/EC if their registered offices, or in the case of investment service

providers only, their central offices, were located in States party to the European Economic Area Agreement, when under the legislation of those States :

1° The management company or the investment service provider must be free, under all circumstances, to exercise the voting rights attaching to the assets under its management, independently of the person controlling it ;

2° The management company or the investment service provider must not take into consideration the interest of the person controlling it or any person controlled by that person in the event of a conflict of interest ;

3° The person required to provide the notification shall comply with the provisions of Point 1° of the last paragraph of Part II of Article 223-12 and file a statement with the AMF to the effect that it complies with the requirements stipulated in Points 1° and 2° for each management company or investment service provider concerned.

The person required to provide the notification shall be subject to the provisions of Part III of Article 223-12.

#### **Article 223-13**

I. - The notification requirements provided for in Parts I, II and III of Article L. 233-7 of the Commercial Code do not apply to equities :

1° acquired solely for the clearing, settlement or delivery of financial instruments under the short-term settlement cycle lasting no more than three trading days after the transaction ;

2° held by an investment services provider in its trading book within the meaning of Council Directive 93/6/EC of 15 March 1993 on the capital adequacy of investment firms and credit institutions, provided that :

a) these equities represent 5 % or less of the share capital or voting rights of the issuer ;

b) the voting rights attached to these equities are not exercised nor otherwise used to intervene in the management of the issuer ;

3° provided to or by the members of the European System of Central Banks (ESCB) in carrying out their functions as monetary authorities, provided that :

a) these equities are provided for a short period ;

b) the voting rights attached to these equities are not exercised.

II. - The notification requirements provided for in Parts I, II and III of Article L. 233-7 of the Commercial Code shall not apply to any market maker whose shareholding breaches the threshold of 5% of the share capital or voting rights in connection with market-making activities, provided :

1° That it does not intervene in the issuer's management ;

2° That it does not exert any influence on the issuer to buy such equities or to support the price of such equities.

III. - A market maker shall notify the AMF within five trading days of starting its activity that it is making or intends to make a market for a given issuer. It shall also notify the AMF within the same period when it stops making a market for the issuer concerned.

This notification shall be made using a standard form to be defined by an AMF Instruction.

IV. - A market maker shall submit to the AMF at its request :

1° Means of identifying the equities or financial instruments concerned. The market maker shall register them in a separate account, if it cannot identify them by any other means ;

2° Where applicable, any agreements between the market maker and the market undertaking, or the issuer.

#### **Article 223-14**

I. - The persons required to provide the notification mentioned in Part I of Article L. 233-7 of the Commercial Code must inform the AMF of changes in major shareholdings within five trading days.

For the purposes of the preceding paragraph, the AMF shall post the calendar of trading days on the different regulated markets established or operating in France to its website.

II. - The information mentioned in Part I must include :

1° the identity of the reporting person ;

2° where applicable, the identity of the natural person or legal entity entitled to exercise voting rights on behalf of the reporting person ;

3° the date on which the threshold was breached ;



4° the reason why the threshold was breached ;

5° the resulting situation in terms of shares and voting rights ;

6° where applicable, the type of assimilation to the shares or voting rights held by the reporting person under Article L. 233-9 of the Commercial Code and as well as, where appropriate, the main points of the agreement mentioned in Point 4° of Part I of Article L. 233-9 of the aforementioned code ;

7° where applicable, the chain of undertakings controlled within the meaning of Article L. 233-3 of the Commercial Code through which the shares and voting rights are held ;

8° the number of securities held by the reporting person that may eventually give access to capital as well as attached voting rights ;

9° the signature of the person required to provide the notification.

The notification shall use the standard notification form specified in an AMF Instruction.

III. - The notification shall be filed with the AMF in accordance with the procedures stipulated in an AMF Instruction. The AMF shall make it public within three trading days of receiving the complete notification. It shall be drafted in French or another language that is customary in the sphere of finance.

#### **Article 223-15**

In the case provided for in Point 8° of Part I of Article L. 233-9 of the Commercial Code, the notification mentioned in Article 223-14 may take the form of a single notification, provided that it clearly explains what the situation will be with regard to voting rights when the proxy holder is no longer able to exercise them after the proxy expires. In this case, the proxy holder is no longer required to give notice when its shareholding goes under the thresholds stipulated in Article L. 233-7 of the Commercial Code after the proxy expires.

### **SUB-SECTION 2 - INFORMATION ABOUT THE TOTAL NUMBER OF VOTING RIGHTS AND SHARES MAKING UP THE SHARE CAPITAL**

#### **Article 223-16**

Each month, companies whose shares are admitted to trading on a regulated market in a State party to the European Economic Area Agreement shall disclose, in accordance with the procedures set out in Article 221-3, the total number of voting rights, determined according to the stipulations of the second paragraph of Article 223-11, and the number of shares making up their share capital, if these figures have changed relative to previous disclosures.

The disclosures mentioned in the first paragraph shall also be made if the company's registered office is outside of the European Economic Area and the company is under the authority of the AMF for supervision of its compliance with the obligation stipulated in Article L. 451-1-1 of the Monetary and Financial Code.

### **SUB-SECTION 3 - STATEMENTS OF INTENT AND CHANGES OF INTENT**

#### **Article 223-17**

The AMF shall publicly disclose the information mentioned in Part VII of Article L. 233-7 of the Commercial Code. The AMF shall specify in an instruction how such information is to be transmitted to it.

The AMF may request equivalent information from companies whose registered offices are not in France and whose shares are admitted to trading on a regulated market.

## **Section 3 - Shareholder agreements**

#### **Article 223-18**

The AMF shall publicly disclose the information mentioned in Article L. 233-11 of the Commercial Code. The AMF shall specify in an instruction how such information is to be transmitted to it.

## Section 4 - Other information

### SUB-SECTION 1 - INFORMATION ON PROPOSALS TO AMEND THE ARTICLES OF ASSOCIATION

#### Article 223-19

The issuers referred to in Article 222-1 shall inform both the AMF and the persons that manage the EEA regulated markets to which their shares are admitted to trading of any proposals to amend their articles of association. Such communication shall be made without delay but at the latest on the date of calling the general meeting.

#### Article 223-20

I. - In the event that a company, whose registered office is in France and whose shares are admitted to trading on a French regulated market or for which an application for admission to trading on such a market has been filed, decides to apply or cease applying the provisions set forth in Articles L. 233-35 to L. 233-39 of the Commercial Code, it shall notify the AMF of amendments to its articles of association as soon as these are made, so that the AMF can post this information on its website.

II. - The following are also subject to the provisions of Part I :

1° any company whose registered office is in France and whose shares are admitted to trading on a regulated market in a Member State of the European Community or in a State party to the European Economic Area (EEA) Agreement, other than France, or for which an application for admission to trading on such a market has been filed ;

2° any company whose registered office is in a Member State of the European Community or in a State party to the EEA Agreement, other than France, and whose shares are admitted to trading on a French regulated market or for which an application for admission to trading on such a market has been filed.

### SUB-SECTION 2 - OTHER INFORMATION

#### Article 223-21

Notwithstanding section 1 of this chapter, the issuers referred to in Article 222-1 shall make public without delay, and in accordance with Article 221-3 :

1° any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative instruments issued by the issuer and giving access to the shares of that issuer ;

2° any change to the terms and conditions of issuance that may directly affect the rights of holders of financial instruments other than equities ;

3° new loan issues and, in particular, any guarantee or security in respect thereof.

The provisions of point 3° shall not apply to a public international body of which a Member State of the European Community or a state party to the EEA agreement is a member.

## Section 5 - Transactions in the company's securities by officers and directors and persons referred to in Article L. 621-18-2 of the Monetary and Financial Code

#### Article 223-22

The persons referred to in Article L. 621-18-2 of the Monetary and Financial Code shall report to the AMF, electronically and within five business days of execution, all acquisitions, disposals, subscriptions or exchanges involving the financial instruments of the issuer at which the persons referred to in (a) and (b) of Article L. 621-18-2 *ibid.* carry out their duties, as well as all transactions in related instruments.

The reports referred to in the first paragraph are posted on the AMF website.

#### Article 223-23

By way of derogation from Article 223-22, notification is not required for transactions carried out by a person mentioned in Article L. 621-18-2 of the Monetary and Financial Code if the total amount of such transactions does not exceed EUR 5,000 in a calendar year. This total is calculated by aggregating the transactions carried out by persons referred to in a) and b) of Article L. 621-18-2 of the Monetary and Financial Code and the transactions carried out on behalf of persons referred to in c) of the same article.

In the case of a transaction in financial instruments related to the issuer's securities, this amount applies to the underlying.

**Article 223-24**

The issuer shall prepare, update and transmit simultaneously to the persons concerned and to the AMF a list of the persons referred to in Article L. 621-18-2 (b) of the Monetary and Financial Code.

The first such transmission shall be made no later than 30 May 2006.

**Article 223-25**

The report referred to in Article 223-22 contains the following :

1° For transactions by a person referred to in Article L. 621-18-2 (a) or (b) of the Monetary and Financial Code, the name of such person and the duties he carries out at the issuer ;

2° For transactions by a person referred to in (c) of the above article, the name of such person with the indication "a person or persons related to...", followed by the name of the person referred to in Article L. 621-18-2 (a) or (b) and the duties he carries out ;

3° Company name of the issuer concerned ;

4° Description of the financial instrument ;

5° Nature of the transaction ;

6° Date and place of the transaction ;

7° The unit price and amount of the transaction.

The report shall be prepared in accordance with the standard format set out in an AMF instruction.

**Article 223-26**

The management report referred to in Article L. 225-100 of the Commercial Code contains a summary statement of the transactions referred to in Article L. 621-18-2 of the Monetary and Financial Code that have been made during the past financial year.

**Section 6 - Lists of insiders****Article 223-27**

Any issuer that issues financial instruments admitted for trading on a regulated market or applying for admission of its securities to trading on such a market shall submit a written list of persons and third parties with regular or occasional access to the inside information, as defined in Article 621-1. It shall submit said list to the AMF at the latter's request and for the purposes of the first paragraph of Article L. 621-18-4 of the Monetary and Financial Code.

The list of persons and third parties with regular or occasional access to the inside information prepared by third parties for the purposes of the second paragraph of Article L. 621-18-4 of the Monetary and Financial Code shall be submitted to the AMF under the same conditions and using the same procedures.

**Article 223-28**

The lists referred to in Article 223-27 shall include :

1° the name or business name of each of the persons ;

2° the reason for their appearing on the list ;

3° the dates on which the list was created and updated.

**Article 223-29**

The lists referred to in Article 223-27 must be updated rapidly in the following cases :

1° if there is a change in the reason for the person's appearing on the list ;

2° if a new person has to appear on the list ;

3° if a person is removed from the list, with a mention of the date on which the person stopped having access to inside information.

**Article 223-30**

The issuer shall notify the persons concerned that they appear on the list and inform them about the rules applying to holding, communicating and using inside information, and the penalties for violations of these rules.

The third parties referred to in the second paragraph of Article 223-27 shall provide the same information to the persons appearing on the lists that they have drawn up.

**Article 223-31**

The lists referred to in Article 222-16 shall be kept for at least five years after they are drawn up or updated.

**Section 7 - Statement of intent in the event of preparations for a takeover bid****Article 223-32**

Without prejudice to the provisions of Article 223-6, in particular when the market for the financial instruments of an issuer is subject to large price swings or unusual trading volumes, the AMF may require persons to publicly disclose their intentions within a set deadline, where there is reason to believe they are preparing a takeover bid, either alone or in concert with others within the meaning of Article L. 233-10 of the Commercial Code. This shall be the case, for example, in the event of discussions between the issuers concerned or the appointment of advisors with a view to preparing a public offer.

The information is publicly disclosed in a news release submitted in advance to the AMF for approval and in accordance with Article 221-3.

**Article 223-33**

Where the persons mentioned in Article 223-32 state their intention to file a draft offer, the AMF sets the date on which they must publish a release describing the terms of the draft offer, or, depending on the circumstances, file a draft offer.

The news release referred to in the first paragraph should mention the financial terms of the draft offer, any agreements that could affect its execution, the interest held in the issuer in question, any conditions that must be satisfied before the draft offer is filed, and the proposed timetable.

The AMF may request any information it deems necessary.

If the terms of the draft offer are not disclosed or if the draft offer is not filed within the deadline mentioned in the first paragraph, the persons in question are deemed not to have the intention of filing a draft offer and are subject to the provisions of Article 223-35.

**Article 223-34**

Sections 10 and 11 of Chapter I of Title III of this book and the provisions relative to trading in the target securities of a public offer shall apply as soon as the statement of intent mentioned in Article 223-33 is published. They shall cease to apply once the company announces that it has abandoned its plans or if the draft offer is not filed within the deadline mentioned in Article 223-33.

The provisions of the first paragraph shall also apply during the period between the announcement of the characteristics of a proposed offer made in accordance with Articles 223-6 and 223-33 and the filing thereof.

**Article 223-35**

If the persons mentioned in Article 223-32 indicate that they do not intend to file a draft offer, or if they are deemed not to have such an intention pursuant to the final paragraph of Article 223-33, they may not file a draft offer for a period of six months starting from when they made their statement or from the expiry of the deadline mentioned in the final paragraph of Article 223-33, unless they provide evidence of major changes in the environment, situation or shareholding structure of the persons concerned, including the issuer itself.

During the period mentioned in the first paragraph, these persons may not place themselves in a situation in which they are obliged to file a draft offer. If they increase, by 2 % or more, the number of equity securities and securities giving access to capital or voting rights that they hold in the issuer, they must report this immediately and indicate the objectives that they intend to pursue through to the expiry of the period.

The information mentioned in the previous paragraph shall be publicly disclosed according to the conditions and procedures set forth in Article 222-22.

## TITLE III - TAKEOVER BIDS

### CHAPTER I - GENERAL RULES AND COMMON PROVISIONS

#### Section 1 - Scope, definitions and general principles

##### SUB-SECTION 1 - SCOPE

###### Article 231-1

This title applies to all public offers made to holders of financial instruments traded on a regulated market in a Member State of the European Community or a State party to the EEA Agreement, including France, where the AMF is the competent authority in the cases provided for in Parts I and II of Article L. 433-1 of the Monetary and Financial Code, by a person acting alone or in concert within the meaning of Articles L. 233-10 and L. 233-10-1 of the Commercial Code, with the aim of acquiring some or all of the financial instruments concerned.

It also applies to buyout offers of financial instruments that are no longer admitted to trading on a regulated market.

The AMF may apply these rules, excepting those governing standing market offers, buyout offers with squeeze-outs, and squeeze-outs, to public offers for financial instruments issued by companies whose registered offices are not in a Member State of the European Community or a State party to the EEA Agreement, where these instruments are admitted to trading on a French regulated market.

For the purposes of this Title, the financial instruments covered are those mentioned in Points 1° and 2° of Section I of Article L. 211-1 of the Monetary and Financial Code and all equivalent instruments issued under foreign law. Offers for debt securities other than those mentioned in Point 8° of Article 233-1 are governed by the provisions of Chapter VIII of this title.

##### SUB-SECTION 2 - DEFINITIONS

###### Article 231-2

For the purposes of this Title :

1° the offeror is any natural or legal person or legal entity that files a draft offer or on whose behalf one or more investment services providers file such draft offer ;

2° the target company is the issuer of the financial instruments to be acquired through the offer ;

3° the persons concerned are the offeror, the target company, and any persons or entities acting in concert with one of the preceding parties ;

4° The offer period is the period of time between the publication by the AMF of the main provisions of the proposed offer and the publication of the final outcome of the offer.

5° the offer term is the period of time between the opening and closing dates of the offer.

##### SUB-SECTION 3 - GENERAL PRINCIPLES

###### Article 231-3

To allow an offer to be conducted in an orderly fashion in the best interests of investors and the market, the parties concerned shall respect the principles of free interplay of offers and counter-offers, equal treatment and information for all holders of the securities concerned, market transparency and integrity, and fairness of transactions and competition.

###### Article 231-4

The persons concerned shall comply with the rules of this title from the time that a draft offer is filed by the offeror until the outcome of the offer is made public.

###### Article 231-5

Once a draft offer has been filed, any restrictive clause agreed by the parties concerned or their shareholders that could have an impact on the assessment of the offer or its outcome, subject to assessment by the courts of its validity, must be disclosed to the parties concerned, the AMF and the public. If it was not possible to mention the clause in the offer document(s), because of the date on which the agreement was concluded or for another reason,

the signatories shall, as soon as the agreement has been concluded, publish a news release detailing the content of the clause in accordance with Article 221-3.

#### **Article 231-6**

Save for the exceptions mentioned in Article 233-1, the offer must be for all the equity securities as well as any securities giving access to the capital and voting rights of the target company.

#### **Article 231-7**

From the beginning of the offer period to the close of the offer, all orders for the target securities shall be executed on the regulated market(s) on which such securities are admitted to trading.

The rules of the regulated markets concerned shall determine how the provisions of the preceding sentence are applied.

### **Section 2 - Nature of the offer and conditions precedent**

#### **Article 231-8**

An offer may consist of :

1° a single offer proposing a purchase of the target securities, an exchange for existing securities or securities to be issued, or a payment in cash and securities ;

2° an alternative offer ;

3° a principal offer with one or more non-severable subordinate options.

Where the securities provided in exchange are not liquid securities admitted to trading on a regulated market in a Member State of the European Community or a State party to the EEA Agreement, the offer must include a cash option.

If, in the twelve months before the offer is filed, the offeror, acting alone or in concert, has purchased, for cash, securities giving it more than 5 % of the shares or voting rights of the target company, the offer must include a cash option.

Where the offer consists of an alternative offer or a single offer proposing payment in cash and securities, the AMF shall assess the validity of the offeror's designation of it as a public cash offer or public exchange offer.

The offeror may give holders the option of selling their securities at a later date, provided that the option is exercisable within a reasonable time, that it is subordinate to the principal offer, and that exercise of the option is unconditionally guaranteed by the institution sponsoring the offer as defined in Article 231-13. Any arrangements that consist in offering payment at a later date of the difference between the future market price and the future offer price must contain guarantees and advantages equivalent to those of a deferred sale.

#### **Article 231-9**

The offeror may stipulate a condition in its offer that a number of securities, expressed as a percentage of the share capital or voting rights, must be tendered in order for the transaction to be successful.

#### **Article 231-10**

An offeror making draft offers for two or more different companies may stipulate that if the threshold set pursuant to Article 231-9 is reached in one of the offers, it will declare the offer to have succeeded only if this threshold is reached in the other offer or offers. While the offers are open, the offeror may withdraw this threshold condition, notably in the case of a competing or improved offer on one of the target companies.

#### **Article 231-11**

If, under competition rules, notice of the draft offer must be given to the European Commission, the minister for economic affairs or the competent authority in this regard in another State party to the EEA Agreement or the United States of America, the offeror may stipulate the condition precedent of obtaining the decision provided for in Article 6-1 a) or b) of EC Regulation 139/2004, the authorisation provided for in Article L. 430-5 of the Commercial Code, or any authorisation of the same nature issued by the foreign State.

An offeror that seeks to assert such provisions shall provide the AMF with a copy of the notices to the authorities concerned and shall keep the AMF informed of the progress of the procedure.

The offer shall lapse if the proposed transaction becomes subject to the procedure of Article 6-1 (c) of EC Regulation 139/2004, or is referred to the French competition authority (Conseil de la Concurrence) under the last paragraph of Part III of Article L. 430-5 of the Commercial Code, or becomes subject to a similar procedure before the competent authority of a foreign State. The offeror shall disclose whether it is seeking to pursue the intended transaction with the authorities to which the case has been referred.

#### **Article 231-12**

Where the proposed offer calls for remittal of securities to be issued, the irrevocability of the offeror's commitments entails an obligation to propose a resolution to the general meeting of the issuing company's shareholders authorising issuance of the securities under the conditions and clauses of the proposed offer, as consideration to persons tendering their securities to the offer, unless the company's governing body has already obtain an express delegation of authority to this effect.

Depending on the applicable provisions of law, regulation or bylaw governing the offeror, the AMF may authorise the offeror to make opening of the offer conditional on its being authorised by a general meeting of shareholders, provided that such a meeting has already been called before the draft offer is filed.

### **Section 3 - Filing of the draft offer, the draft offer document and the draft reply document**

#### **Article 231-13**

The draft offer shall be filed by one or more investment services providers authorised to act as underwriter(s) and acting on behalf of the offeror(s).

The filing is made by means of a letter addressed to the AMF guaranteeing the tenor and irrevocable nature of the commitments made by the offeror. This letter must be signed by at least one of the sponsoring institutions.

This letter shall stipulate :

- 1° the aims and intentions of the offeror ;
- 2° the number and type of securities of the target company that the offeror already holds, alone or in concert, or may hold on its own initiative, as well as the date and terms on which such holdings were acquired in the last twelve months or may be acquired in the future ;
- 3° the price or exchange ratio at which the offeror proposes to acquire the target securities, the basis on which such price or ratio was determined, and the proposed conditions of payment or exchange ;
- 4° if applicable, the conditions required pursuant to Articles 231-9 to 231-12.

The letter shall be accompanied by :

- 1° the draft offer document drawn up by the offeror, on its own or jointly with the target company. In the cases provided for in Article 261-1, the offeror's draft offer document may not be prepared jointly with the target company, except in the event of a squeeze-out ;
- 2° copies of any prior notices given to other bodies empowered to authorise the proposed transaction.

In the case provided for in Part IV of Article L. 433-3 of the Monetary and Financial Code, the letter shall also be accompanied by :

- 1° the filed offer document or a draft of the offer document that will be filed ;
- 2° any other document constituting a binding commitment proving that an irrevocable and fair draft offer has been or will be filed for all the equity securities and securities giving access to the capital or voting rights of the company of which more than one-third of the shares or voting rights is held, where such holding constitutes an essential part of the target company's assets.

In all cases, an electronic version of the draft offer document must be sent to the AMF for posting on its website.

#### **Article 231-14**

The AMF shall make public the main provisions of the draft offer. Such publication shall signal the beginning of the offer period.

#### **Article 231-15**

Once the proposed offer has been filed, the Chairman of the AMF may ask the market operator that runs the regulated market on which the target company's securities are admitted to trading to halt trading in those securities.

Such request may also extend to other securities concerned by the draft offer.

If need be, the same request may be made to more than one market operator.

## **Section 4 - Disclosures to shareholders and the public**

### **Article 231-16**

I. - Once the offer period begins, the draft offer document shall be made available to the public free of charge at the offices of the offeror and the sponsoring institution(s). Where the offer document has been prepared jointly with the target company, it shall also be made available at the offices of the target company and the organisations engaged as paying agent for the target company's securities.

Where the registered office of the offeror or sponsoring institution is outside France, the offer document must be made available at the offices of an investment services provider in France designated for this purpose by the offeror or sponsoring institution.

The draft offer document shall also be published on the website of the offeror and, if it was prepared jointly with the target company, on the website of the target company, provided that these companies have websites.

II. - In all cases, a copy of the draft offer document must be sent free of charge to any person who requests it.

III. - On or before the date that the draft offer is filed with the AMF, a news release shall be issued. The offeror shall ensure that the release is distributed in accordance with Article 221-3. This news release shall present the main elements of the draft offer document and explain how the document is being made available.

IV. - The draft offer document and the news release mentioned in Part III shall include the words : "This offer and the draft offer document are subject to AMF approval".

### **Article 231-17**

The target company may, once the news release mentioned in Part III of Article 231-16 has been published, issue its own news release in accordance with Article 221-3 to inform the public of the opinion of its Board of Directors or Supervisory Board or, in the case of a foreign company, the competent governing body, on the benefits of the offer or the consequences of the offer for the target company, its shareholders and its employees.

Where applicable, the news release shall mention the findings of the report by the independent appraiser appointed pursuant to Article 261-1. If the news release is published before the appraiser submits his report, the target company shall issue another release when the report is published, mentioning the appraiser's findings and the reasoned opinion of the governing bodies referred to in the first paragraph.

In all cases, if the independent appraiser has not completed his assignment or has not been appointed by the time the offeror files its draft offer document, the target company shall issue a news release to inform the public of the identity of the independent appraiser as soon as the offeror publishes its draft document or as soon as the appraiser is appointed.

The AMF may request any disclosure that it deems necessary.

## **Section 5 - Contents of the draft offer document and the reply document**

### **Article 231-18**

The draft offer document prepared by the initiator, which must meet the content requirements specified in an AMF instruction, shall mention :

1° the identity of the offeror ;

2° the terms of the offer, including in particular :

- a) the proposed price or exchange ratio, based on generally accepted objective valuation criteria, the characteristics of the target company and the market for its securities ;
- b) the number and type of securities that it promises to acquire ;
- c) the number and type of securities of the target company that the offeror already holds directly, indirectly or in concert, or may hold on its own initiative, as well as the date and terms on which such holdings were acquired in the last twelve months or may be acquired in the future ;
- d) where applicable, the conditions to which the offer is subject pursuant to Articles 231-9 to 231-12 ;



- e) the planned timetable for the offer ;
- f) where applicable, the number and type of securities tendered in exchange by the offeror ;
- g) the terms of financing for the transaction and the impact of those terms on the assets, activities and financial results of the companies concerned ;

3° its intentions for at least the coming twelve months with regard to (i) the industrial and financial strategy of the companies concerned and (ii) continued public trading on a regulated market of the equity securities or securities giving access to the capital of the target company ;

4° its policy with respect to employment. In particular, the offeror shall indicate, based on the data available to it and its intentions in the matter of industrial and financial strategy as mentioned in Point 3° above, any foreseeable changes in the size and composition of the workforce ;

5° the law applicable to contracts between the offeror and holders of the target company's securities following the offer, and competent jurisdictions ;

6° agreements relating to the offer to which the offeror is party or of which it is aware, as well as the identity and characteristics of persons with which it is acting in concert or persons acting in concert with the target company within the meaning of Articles L. 233-10 and L. 233-10-1 of the Commercial Code and of which the offeror is aware ;

7° if relevant, the opinion and the reasons therefor of the Board of Directors or Supervisory Board, or, in the case of a foreign offeror, the competent governing body, regarding the benefits of the offer or the consequences of the offer for the offeror, its shareholders and its employees ; and the voting procedures by which this opinion was obtained, with the possibility for dissenting members to request that their identity and position be mentioned ;

8° in the case provided for in Part IV of Article L. 433-3 of the Monetary and Financial Code, a commitment to file an irrevocable and fair draft offer for all the equity securities and securities giving access to the capital or voting rights of the company of which more than one-third of the shares or voting rights is held, where such holding constitutes an essential part of the target company's assets ;

9° if relevant, the report by the independent appraiser mentioned in Article 261-3 ;

10° procedures for making available the information mentioned in Article 231-28.

The offer document shall bear the signature of the initiator, or of its legal representative, declaring that the information contained therein is accurate.

The offer document shall also include a declaration by the legal representatives of the sponsoring institutions as to the accuracy of the information about the presentation of the offer and the information used to appraise the proposed price or exchange ratio.

#### **Article 231-19**

The reply document of the target company, which must meet the content requirements specified in an AMF instruction, shall mention :

1° the agreements mentioned in Article 231-5 ;

2° the information mentioned in Article L. 225-100-3 of the Commercial Code, updated where applicable as at the date of the offer, to the best of the company's knowledge ;

3° the independent appraiser's report in the cases provided for in Article 261-1. In order to protect its legitimate interests, the target company may assume responsibility for not disclosing certain information in the independent appraiser's report, provided such non-disclosure is unlikely to mislead the public ;

4° the opinion and the reasons therefor of the Board of Directors or Supervisory Board, or, in the case of a foreign offeror, the competent governing body, regarding the benefits of the offer or the consequences of the offer for the target company, its shareholders and its employees ; and the voting procedures by which this opinion was obtained, with the possibility for dissenting members to request that their identity and position be mentioned ;

5° if they are available and different from the opinion mentioned in Point 4°, comments by the works council, or, failing that, by staff representatives, or, failing that, by staffmembers ;

6° whether members of the governing bodies mentioned in Point 4° intend to tender their shares to the offer ;

7° the procedures for making available the information mentioned in Article 231-28.

The reply document shall bear the signature of the legal representative of the target company, declaring that the information contained therein is accurate.

## Section 6 - Review of the draft offer by the AMF

### Article 231-20

I. - The AMF shall have ten trading days from the beginning of the offer period to determine whether the draft offer complies with applicable laws and regulations.

II. - In the cases provided for in Article 261-1, the statement of compliance shall be issued no earlier than five trading days after the target company has filed its draft reply document.

III. - In all cases, the AMF may request any supporting documentation or guarantees that it deems appropriate, as well as any further information that it needs for its assessment of the draft offer, the draft offer document or the reply document. In this case, the time period is suspended. It resumes once the information requested has been received.

### Article 231-21

To determine whether the draft offer complies with applicable laws and regulations, the AMF shall examine :

1° The aims and intentions of the offeror.

2° where applicable, the type and characteristics of and market for any securities proposed in exchange ;

3° the conditions stipulated by the offeror pursuant to Articles 231-9 and 231-10 ;

4° the information in the draft offer document ;

5° in the cases provided for in Article 261-1, the financial terms of the offer, notably with respect to the independent appraiser's report and the reasoned opinion of the Board of Directors, the Supervisory Board, or, in the case of a foreign offeror, the competent governing body.

The AMF may ask the offeror to modify the draft offer if the AMF believes that it may contravene the legal and regulatory provisions mentioned in the first paragraph, and notably the principles referred to in Article 231-3.

### Article 231-22

In the cases and in accordance with the conditions set forth in Section 2 of Chapter II and in Chapters III to VII of this title, the AMF shall assess application of the special provisions governing the proposed price or exchange ratio.

### Article 231-23

Where the draft offer meets the requirements of Articles 231-21 and 231-22, the AMF shall publish a reasoned statement of compliance that also constitutes an approval of the offer document.

Where the document does not meet the requirements, the AMF shall refuse to issue a statement of compliance for the draft offer and shall state the grounds for refusal.

Where appropriate, the AMF shall set a date for resumption of trading in the securities concerned if trading is still halted. It shall inform the market operator accordingly.

### Article 231-24

In the cases mentioned in Part III of Article L. 433-1 of the Monetary and Financial Code, where the offer concerns equity securities that are also admitted to trading on a market not located in a Member State of the European Community or a State party to the EEA Agreement, whether regulated or not, where the AMF does not claim jurisdiction, and where an offer document has been prepared in compliance with a procedure governed by a competent foreign authority, the AMF may exempt the offeror and the target company from the obligation to prepare an offer document and a reply document, provided that the offeror and the target company publish, jointly or separately, a news release subject to review by the AMF. The release, which must be distributed in accordance with Article 221-3 by the author, shall present the main elements of the offer document. In such cases, only Articles 231-36, 231-38 and 231-41 shall be applicable. The information called for in Articles 231-5, 231-18 and 231-19, if not included in the offer document, must be included in the news release.

### Article 231-25

Once the offer document has been approved by the competent authority of another Member State of the European Community or a State party to the EEA Agreement, the offeror and the target company are exempt from preparing an offer document and a reply document, provided that their application is accompanied by a copy of the offer document approved by the competent authority and translated in French.

This document should be published in accordance with the procedures provided for in Article 231-27.

**Article 231-26**

No later than five trading days after the AMF has issued its statement of compliance, the target company shall file a draft reply document with the AMF. Exceptionally, if an independent appraiser has been appointed pursuant to Article 261-1, the target company shall file its draft reply document no later than twenty trading days after the beginning of the offer period.

The electronic version of the draft reply document shall be sent to the AMF for posting on its website.

As soon as it has been filed, the draft reply document shall be made available to the public in accordance with the procedures mentioned in Parts I and II of Article 231-16 and shall contain the words referred to in Part IV of the said article. No later than when it is filed with the AMF, the document shall be described in a news release that presents the main elements of the draft reply document, explains how the document is being made available, and contains the words referred to in Part IV of Article 231-16. The target company shall ensure distribution of the news release in accordance with Article 221-3 .

Except in the cases provided for in Part II of Article 231-20, the AMF shall have five trading days from the filing of the draft reply document to issue its approval in accordance with Article 231-20. During this time, the AMF may request any additional information that it deems necessary for its review. In this case, the time period is suspended. It resumes once the information requested has been received.

**Section 7 - Distribution of the offer and reply documents****Article 231-27**

1° Public distribution of the AMF-approved offer document drawn up by the offeror, alone or jointly with the target company, must occur before the opening date of the offer and no later than the second trading day following issuance of the statement of compliance.

2° The offer document approved by the AMF must be distributed in one of the following forms :

- a) publication of the document in at least one daily newspaper with nationwide circulation that covers economic and financial news ;
- b) publication of a summary of the offer document on the same conditions as in a), when the offer document is made available free of charge at the offices of the offeror and the sponsoring institution(s) ; or publication of a news release, distributed in accordance with Article 221-3 under the offeror's responsibility, specifying that the offer document is available as described above.

Where the registered office of the offeror or sponsoring institution is outside France, the offer document must be made available at the offices of an investment services provider in France designated for this purpose by the offeror or sponsoring institution. Where the offer document has been prepared jointly with the target company, the document shall also be made available free of charge at the offices of the target company and the organisations engaged as paying agent for the target company's securities.

In all cases, a copy of the document must be sent free of charge to any person who requests it, and an electronic version of the offer document must be sent to the AMF for posting on its website

3° The target company sends its reply document to the offeror as soon as the AMF has issued its approval. The reply document must be distributed in one of the following forms :

- a) publication of the document in at least one daily newspaper with nationwide circulation that covers economic and financial news ;
- b) publication of a summary of the reply document on the same conditions as in a), when the reply document is made available free of charge at the offices of the target company or the organisations engaged as paying agent for its securities ; or publication of a news release, distributed in accordance with Article 221-3 under the offeror's responsibility, specifying that the document is available as described above.

In all cases, a copy of the reply document must be sent free of charge to any person who requests it, and an electronic version must be sent to the AMF for posting on its website.

4° The approved offer and reply documents published and made available to the public shall always be identical to the original versions approved by the AMF.

## Section 8 - Other information

### Article 231-28

I. - Disclosures about the legal, financial, accounting and other characteristics of the offeror and the target company, which must meet the content requirements specified in an AMF instruction, shall be filed with the AMF and made available to the public no later than the day before the offer opens, in accordance with the procedures referred to in Points 2° and 3° of Article 231-27.

The reports by the statutory auditors of the offeror and the target company must also be filed with the AMF under the same conditions.

II. - Foreign offerors shall appoint, with the assent of the AMF, a statutory auditor that verifies the translation of the financial statements and notes as well as the relevance of any supplements and adaptations thereto. The statutory auditor shall send a letter to the offeror when it completes its work on the translation of these elements and shall state its observations, if any. The offeror shall forward a copy of the completion letter to the AMF. These provisions shall also apply to foreign target companies.

III. - For the waiver provided for in Point 2° of Article 212-4 and Point 3° of Article 212-5 to be effective, the statutory auditors shall declare that any forward-looking information, whether estimated or pro forma, has been properly prepared in accordance with the indicated basis and that the accounting basis is consistent with the offeror's accounting policies.

The offeror's statutory auditors shall examine all the information from the offeror referred to in Part I and, where such is the case, the updates or corrections thereto. This overall examination and any special verifications shall be carried out in accordance with a standard issued by the national institute of statutory auditors (*Compagnie Nationale des Commissaires aux Comptes*).

They shall draw up a completion letter for their work, in which they inform the offeror about any reports issued. Upon completion of their overall examination and any special verifications that may have been made in accordance with the aforementioned professional standard, they shall state their observations, if any.

The offeror shall forward a copy of the completion letter to the AMF.

IV. - No later than the day before the offer opens, the offeror, the target company and at least one of the sponsoring institutions shall file a declaration certifying that all the information required under this article has been filed and has or will be disseminated within the timeframe stipulated in paragraph I.

### Article 231-29

If the AMF finds an omission or a material inaccuracy in the content of the information mentioned in Article 231-28, it shall inform the offeror or the target company, as appropriate, of this fact. The offeror or target company is then required to amend the information and file the corrections with the AMF.

Any omission or inaccuracy, with regard to this General Regulation or to AMF instructions, that could manifestly distort an investor's assessment of the proposed transaction shall be considered as material.

These corrections shall be made available to the public as soon as possible, in accordance with Points 2° and 3° of Article 231-27.

### Article 231-30

The AMF may postpone the closing date of the offer to give holders of securities at least five trading days to respond following publication of the information mentioned in Article 231-29.

## Section 9 - Offer timetable

### Article 231-31

The offer timetable is set based on the distribution date of the joint offer document of the offeror and the target company or the reply document of the target company.

### Article 231-32

The offer opens on the day after distribution of the approved offer document prepared jointly by the offeror and the target company, or of the offer document prepared by the offeror, or, in the cases provided for in Article 261-1, of the reply document prepared by the target company, along with the information mentioned in Article 231-28 and, where applicable, after the AMF has received any prior authorisations required by law.

The AMF publishes the opening and closing dates of the offer and the release date of the outcome of the offer.

**Article 231-33**

Persons wishing to tender their securities to the offer must send their orders to an authorised provider during the offer period.

**Article 231-34**

At any time during the offer period, the AMF may postpone the closing date of the offer.

**Article 231-35**

The AMF publishes the results of the tender offer, which are transmitted to it by the market operator concerned or by the sponsoring institution, as the case may be.

**Section 10 - Obligations of officers and directors, persons concerned and their advisers****Article 231-36**

The parties concerned, their officers and directors and their advisers shall demonstrate particular vigilance in their statements.

Any advertisement, regardless of its form and method of dissemination, shall be communicated to the AMF before being disseminated.

Such advertisements shall :

- 1° state that an offer document or reply document has been or will be published and indicate where investors are or will be able to obtain it ;
- 2° be clearly recognisable as advertisements ;
- 3° contain no information that could mislead the public or discredit the offeror or the target company ;
- 4° be consistent with the information contained in the news releases, the offer document and the reply document ;
- 5° where applicable and at the request of the AMF, contain a warning about certain exceptional characteristics of the offeror, the target company, or the financial instruments concerned by the offer.

**Article 231-37**

Any additional information not included in the offer document approved by the AMF must be made public in a news release. The author of the release shall ensure that it is distributed in accordance with Article 221-3.

**Section 11 - Reporting of public offer transactions****Article 231-38**

The parties concerned, the members of their Boards of Directors, Supervisory Boards or Management Boards, the sponsoring and advising institutions, individuals or legal entities holding, directly or indirectly, at least 5 % of the shares or voting rights at shareholders' meetings, and other individuals or legal entities acting in concert with them, are required to report to the AMF every day, after the trading session, all purchases or sales they have made in the securities concerned by the offer, as well as any other transactions with the effect of transferring, immediately or in the future, title to such securities or voting rights.

This same reporting obligation applies to individuals or legal entities that have acquired, directly or indirectly and after the filing of the draft offer document, a quantity of securities of the target company representing at least 0.5 % of its equity, for as long as they hold that quantity of securities.

The reports to the AMF must include :

- 1° the name and address of the seller or acquirer ;
- 2° the date of the sale or purchase ;
- 3° the number of securities traded and the price at which they were traded ;
- 4° the number of securities and voting rights owned after the transaction.

In the case of a public exchange offer, these reports cover transactions in the securities of the offeror as well as in those of the target company.

**Article 231-39**

With the exception of the reports made by sponsoring and advising institutions, the AMF makes public the reports sent to it.

**Article 231-40**

Any individual or legal entity that has increased the number of shares or voting rights that it holds in the target company by at least 2 % of the total number of such shares or voting rights, or that has acquired a number of shares representing more than 5 %, 10 %, 15 %, 20 %, 25 % or 30 % of the equity or voting rights of the target company, is required to make public immediately its intentions in regard to a tender offer in progress.

**Article 231-41**

All intermediaries taking part in the routing and processing of orders are required to comply with this Title. If need be, they must inform the originators of the orders.

**Section 12 - Challenging the equivalence of defensive measures****Article 231-42**

Any person challenging the equivalence of the measures mentioned in Article L. 233-32 of the Commercial Code shall transmit simultaneously to the AMF and to the target company the arguments and documents on which the challenge is based. Once it has received these documents, the target company has ten trading days in which to present its comments to the AMF.

The AMF shall issue its decision within five trading days of the reply from the target company. The AMF may request any supporting documentation or further information that it deems necessary. In this case, the time period is suspended. It resumes once the information requested has been received.

The AMF shall make its decision public.

**Section 13 - Suspending the effects of restrictions on the exercise of voting rights and extraordinary powers to appoint and dismiss directors, members of the Supervisory Board, members of the Management Board, Chief Executive Officers and Deputy Chief Executive Officers****Article 231-43**

The effects of statutory restrictions on the number of votes held by individual shareholders at general meetings, mentioned in the first paragraph of Article L. 225-125 of the Commercial Code, shall be suspended during the first general meeting following the close of the offer where the offeror, acting alone or in concert, has acquired more than two-thirds of the shares or voting rights of the target company.

**Article 231-44**

Where provided for by the articles of association, the effects of statutory restrictions on the exercise of voting rights attached to the equities of the company, and the effects of clauses in agreements concluded after 21 April 2004 providing for restrictions on the exercise of voting rights attached to the equities of the company, shall be suspended during the first general meeting following the close of the offer where the offeror, acting alone or in concert, has acquired more than one-half of the shares or voting rights of the target company.

**Article 231-45**

Where provided for by the articles of association, the extraordinary powers held by certain shareholders to appoint and dismiss directors, members of the Supervisory Board, members of the Management Board, Chief Executive Officers and Deputy Chief Executive Officers shall be suspended during the first general meeting following the close of the offer where the offeror, acting alone or in concert, has acquired more than one-half of the shares or voting rights of the target company.

## CHAPTER II - STANDARD PROCEDURE

### Section 1 - General provisions

#### Article 232-1

Where the offeror, acting alone or in concert, holds less than one-half of the shares or voting rights of the target company, only the standard offer procedure shall apply.

#### Article 232-2

The term of the offer is twenty-five trading days. This term may be extended to not more than thirty-five trading days when the target company does not file an offer document jointly with the offer.

Exceptionally, when the offeror asserts the provisions of Article 231-11, the closing date and timetable of the offer are set after the AMF has received the documents supporting the authorization by the competition authorities mentioned in the first point of Article 231-11.

In agreement with the AMF, the market operator concerned announces the conditions and deadlines for account-keeping institutions to deposit securities tendered to the offer and for delivery and settlement in securities or cash, as well as the date on which the outcome of the offer will be available.

Orders of persons wishing to tender their securities to the offer may be cancelled at any time up to and including the closing date of the offer.

#### Article 232-3

In principle, the outcome of the offer is published no later than nine trading days after the closing date.

If the AMF determines that the offer has succeeded, the market operator announces the terms of settlement and delivery for the securities acquired by the offeror. If the AMF determines that the offer has not succeeded, the market operator announces the date on which the target securities will be returned to the account-keeping institutions.

If the offer is subject to an acceptance threshold, the AMF publishes a provisional result as soon as the market operator notifies it of the total number of securities tendered for centralisation by authorised intermediaries.

#### Article 232-4

If the offer is successful, it shall be re-opened within ten trading days of publication of the outcome.

The AMF publishes the timetable for the re-opened offer, which must last at least ten trading days. This signals the beginning of a new offer period, which terminates when the outcome of the offer is published.

### Section 2 - Competing and improved offers

#### Article 232-5

At any time after the opening of the offer but no later than five trading days before it closes, a competing proposed offer on the securities of the target company or one of the target companies may be filed with the AMF.

#### Article 232-6

An offeror may improve upon the terms of its original offer or the most recent competing offer until no later than five trading days before the offer closes.

#### Article 232-7

To be declared compliant, a competing public cash offer or an improved cash offer must be at least 2 % higher than the price stated in the public cash offer or the previous improved cash offer.

In all other cases, the AMF declares compliant any competing draft offer or improved offer which, assessed in the light of Articles 231-21 and 231-22, significantly improves upon the terms offered to holders of the target securities.

However, a competing or improved offer may be declared compliant if, without modifying the terms of its previous offer, the offeror removes the acceptance threshold below which the offer will not be declared successful.

**Article 232-8**

Where the AMF declares an improved offer to be compliant, it determines whether to postpone the closing date of the offer(s) and to void orders tendering securities to the earlier offer(s).

**Article 232-9**

Except when the terms of its offer are raised automatically, an offeror that raises its preceding offer must prepare an additional document to supplement the offer document submitted for AMF review in accordance with Article 231-20.

This supplemental document specifies how the terms of the new offer are improved relative to those of the preceding offer, indicating the changes of the various items required by Article 231-18.

The opinion and reasons therefor of the Board of Directors or Supervisory Board or, in the case of a foreign company, the competent governing body of the target company, including the information specified in Article 231-19, are communicated to the AMF. This information is made public as specified in Article 231-37.

**Article 232-10**

A competing offer is opened in accordance with the provisions of Article 231-32. Where the AMF determines the timetable for the competing offer, it aligns the closing dates of all competing bids on the furthest date, without prejudice to the provisions of Article 231-34.

Where a competing offer is opened, all orders to tender securities to the earlier offer shall be null and void.

**Article 232-11**

The offeror may withdraw its offer within five trading days of publication of the timetable for a competing offer or improved competing offer. If it does so, it must inform the AMF of its decision, which is made public.

The offeror may also withdraw an offer if it is frustrated or if the target company adopts measures that modify its substance, either during the offer or in the event that the offer is successful. The offeror may not exercise this right without prior authorisation from the AMF, which rules on the basis of the principles set forth in Article 231-3.

**Article 232-12**

When a period of more than ten weeks has elapsed since the public announcement of the opening of an offer, the AMF may, with a view to expediting comparison of competing offers and with due observance of the order of their filing, set deadlines for filing each successive improved offer.

The AMF announces its decision and specifies the implementation procedures. The deadline may not be less than three trading days from the publication of the AMF's decision on each improved offer.

**Article 232-13**

When a period of more than ten weeks has elapsed since the opening of an offer, the AMF may, with a view to hastening the outcome of the outstanding offers, decide to use a cut-off bid procedure.

The AMF sets a date by which each of the offerors must either inform the AMF that its offer is maintained on the same terms or file a final improved offer.

Where applicable, the AMF rules on the compliance of the improved offer(s) and sets the final offer closing date.

In such case, notwithstanding Article 232-6, no improved offer may be filed unless a new competing offer has been filed, declared compliant and opened.

**Section 3 - Market trading in the securities concerned by the offer****SUB-SECTION 1 - TRADING BY THE OFFEROR AND PERSONS ACTING IN CONCERT WITH THE OFFEROR****Article 232-14**

From the time that a draft offer has been filed or trading in the target securities has resumed, and until the outcome of the offer is made public, the initiator of a public cash offer not contingent upon one of the conditions mentioned in Articles 231-9 to 231-11, and persons acting in concert with such offeror, are permitted to purchase the target company's securities in the market.

Where such trading takes place in the market at a price higher than the offer price, at any time prior to the cut-off date stated in Article 232-6 for the filing of an improved offer, the offer price is automatically raised to the higher of



102 % of the stipulated offer price or the price actually paid in the market, regardless of the quantity of securities purchased and the price at which they were acquired ; and the offeror is not allowed to change the other terms and conditions of the offer. The same rule applies to the market in subscription rights for a new issue of equity securities by the target company.

After the cut-off date and until the offer closes, the offeror and persons acting in concert with it may not buy the securities of the target company at a price higher than the offer price.

#### **Article 232-15**

Between the closing of the offer and the publication of the offer outcome, the offeror and persons acting in concert with it may not buy the securities of the target company at a price higher than the offer price.

#### **Article 232-16**

Between the closing of the offer and either the date of the AMF's announcement, pursuant to Article 232-3, that the offer has succeeded, or the date at which the target securities are returned to the account-keeping institutions, the offeror and persons acting in concert with it may not sell the securities of the target company in the market.

### **SUB-SECTION 2 - TRADING BY THE TARGET COMPANY AND PERSONS ACTING IN CONCERT WITH IT**

#### **Article 232-17**

The target company and persons acting in concert with it may not trade in the market, directly or indirectly, in the equity securities or own equity instruments of the target company.

Where the offer is to be settled entirely in cash, the target company may proceed with a share buyback programme if the resolution adopted at the shareholders' meeting that authorised the programme has expressly provided for this. If this is a measure designed to frustrate the offer, its implementation must be approved or confirmed by the shareholders' meeting.

### **SUB-SECTION 3 - TRADING BY PARTIES CONCERNED BY A PUBLIC EXCHANGE OFFER OR PUBLIC CASH AND EXCHANGE OFFER**

#### **Article 232-18**

Whenever all or part of the offer is to be settled in securities, the parties concerned may not trade in the market in the equity securities or securities giving access to the equity of the target company during the offer period.

From the filing of the draft offer until the close of the offer, these parties may not trade in the market in the equity securities or securities giving access to the capital of the company whose securities are offered in exchange.

### **SUB-SECTION 4 - TRADING BY SPONSORING AND ADVISING INSTITUTIONS**

#### **Article 232-19**

The rules set forth in Articles 232-14 to 232-16 and 232-18 are applicable to own-account trades made by institutions advising the offeror or the target company or sponsoring the offer, as well as by any company in the same corporate group as any of these institutions.

However, an advising or sponsoring institution is permitted to :

1° trade in the securities concerned by the offer as part of its arbitrage, market-making or position-hedging activities, to the extent that such trades are made in the ordinary course of business and the staff, resources, objectives and responsibilities pertaining to them are separate from those involved in the offer ; ;

2° trade in the market if the offeror has given the institution a mandate to hedge a risk it has taken in connection with the offer.

### **SUB-SECTION 5 - TRADING WHEN THE OFFER HAS BEEN RE-OPENED**

#### **Article 232-20**

The provisions of Articles 232-15, 232-16, 232-18 and 232-19 shall continue to apply during the period of the re-opened offer.

However, the issuer of equity securities proposed as consideration in a public exchange offer may trade in its own securities as part of a share buyback programme provided for in Article L. 225-209 of the Commercial Code.

## CHAPTER III - SIMPLIFIED PROCEDURE

### Article 233-1

The simplified offer procedure may be used in the following cases :

1° an offer by a shareholder that already holds directly or indirectly, alone or in concert within the meaning of Article L. 233-10 of the Commercial Code, one-half or more of the target company's equity and voting rights ;

2° an offer by a shareholder that, following an acquisition, holds directly or indirectly, alone or in concert within the meaning of Article L. 233-10 of the Commercial Code, one-half or more of the target company's equity and voting rights ;

3° an offer for no more than 10 % of the voting equity securities or voting rights of the target company, taking into account the voting equity securities and voting rights that the offeror already holds, directly or indirectly ;

4° an offer by a person, acting alone or in concert within the meaning of Article L. 233-10 of the Commercial Code, for preference shares, investment certificates or voting rights certificates ;

5° an offer by a company to buy back its own shares, pursuant to Article 225-207 of the Commercial Code ;

6° an offer by a company to buy back its own shares, pursuant to Article 225-209 of the Commercial Code ;

7° an offer by the issuing company for securities giving access to its equity ;

8° an offer by the issuing company to exchange debt securities that do not give access to capital for equity securities or securities that do give access to its capital.

### Article 233-2

The simplified public cash offer is implemented by purchases in the market on the terms stipulated at the opening of the offer, except in the case of the limited offers referred to in Points 3°, 5° and 6° of Article 233-1 and in Articles 233-4 and 233-5.

The simplified exchange offer is centralised by the market operator concerned or by the sponsoring institution under the supervision of the market operator.

The offer period for a simplified offer may be limited to ten trading days in the case of a cash offer and to fifteen trading days in other cases, with the exception of a buyback offer pursuant to Article L. 225-207 of the Commercial Code.

### Article 233-3

In the case of a cash offer under Point 1° of Article 233-1, and subject to the provisions of Articles 231-21 and 231-22, the price stipulated by the offeror may not, except with AMF approval, be less than the volume-weighted average share price over the sixty trading days preceding publication of the notice of filing of the draft offer.

### Article 233-4

In the case of an offer for investment certificates or voting rights certificates, the offeror may limit itself to acquiring a quantity of voting rights certificates or investment certificates equivalent to the number of such investment certificates or voting rights certificates, respectively, that it already holds.

### Article 233-5

If the person making a simplified offer has been authorised to reserve the right to scale down the sale or exchange orders made in response to its offer, the scaling-down is done on a proportional basis, subject to any necessary adjustments.

Orders made in response to a buyback offer filed pursuant to Point 5° of Article 233-1 are scaled down in accordance with Decree 67-236 of 23 March 1967.

In such cases, the offeror may not trade in the market in the securities concerned.

### Article 233-6

The provisions of Articles 232-15, 232-16, 232-18 and 232-19 apply to simplified tender offers. However, the issuer of equity securities proposed as consideration in a simplified public exchange offer may continue to trade in its own securities as part of a share buyback programme provided for in Article L. 225-209 of the Commercial Code.

## CHAPTER IV - MANDATORY FILING OF A DRAFT OFFER

### Article 234-1

For the purposes of this Chapter, equity securities shall mean voting securities if a company's equity capital consists partly of non-voting securities.

### Article 234-2

Where a natural or legal person, acting alone or in concert within the meaning of Article 233-10 of the Commercial Code, comes to hold more than one-third of a company's equity securities or voting rights, such person is required, on its own initiative, to inform the AMF immediately thereof and to file a draft offer for all the company's equity securities, as well as any securities giving access to its capital or voting rights, on terms that can be declared compliant by the AMF.

The proposed offer may not contain a clause requiring a minimum number of securities to be tendered in order for the offer to be declared successful. Subject to this proviso, the provisions of Chapter I and, as appropriate, Chapters II or III of this Title are applicable to mandatory tender offers.

### Article 234-3

Without prejudice to Part IV of Article L. 433-3 of the Monetary and Financial Code, where more than one-third of the shares or voting rights of a company whose equity securities are admitted to trading on a regulated market in a Member State of the European Community or in a State party to the EEA Agreement, including France, is held by another company and constitutes an essential part of the holder's assets, the obligation defined in Article 234-2 applies whenever :

- 1° a person acquires control of the holder, within the meaning of the law and regulations applicable to that holder ;
- 2° a group of persons acting in concert acquires control of the holder, within the meaning of the law and regulations applicable to that holder, unless one or more of them already held control and remains predominant, and in such case, as long as the balance of the respective holdings is not significantly altered.

Natural or legal persons acting alone or in concert are subject to the requirement set forth in Article 234-2 when, as a result of a merger or asset contribution, they come to hold more than one-third of a company's equity securities or voting rights and when such securities represent an essential part of the assets of the entity absorbed or contributed.

### Article 234-4

The AMF may authorise, under terms that are made public, a temporary breach of the one-third threshold mentioned in Articles 234-2 and 234-3 if the breach amounts to less than 3 % of the equity and voting rights and lasts no longer than six months. The person(s) concerned shall undertake not to exercise the corresponding voting rights during the period of resale of the securities.

### Article 234-5

The provisions of Article 234-2 apply to natural or legal persons, acting alone or in concert, who hold directly or indirectly between one-third and one-half of the total number of equity securities or voting rights of a company and who, within a period of less than twelve consecutive months, increase such holdings by 2 % or more of the company's total equity securities or voting rights.

Persons who, alone or in concert, hold directly or indirectly between one-third and one-half of a company's capital or voting rights must keep the AMF informed of any change in such holdings. The AMF shall make these disclosures public.

### Article 234-6

When a draft offer is filed pursuant to Articles 234-2, 234-3 and 234-5, the proposed price must be at least equivalent to the highest price paid by the offeror, acting alone or in concert within the meaning of Article 233-10 of the Commercial Code, in the twelve-month period before the draft offer was filed.

The AMF may request or authorise a price modification if this is warranted by a manifest change in the characteristics of the target company or in the market for its securities, and notably in the following cases :

- 1° if events liable to materially alter the value of the securities concerned occurred in the twelve-month period before the draft offer was filed ;
- 2° if the target company is in recognised financial difficulty ;

3° if the price mentioned in the first paragraph results from a transaction that includes related items involving the offeror, acting alone or in concert, and the seller of the securities acquired by the offeror over the last twelve months.

In these cases, or in the absence of transactions by the offeror, acting alone or in concert, in the securities of the target company over the twelve-month period referred to in the first paragraph, the price is determined based on generally accepted objective valuation criteria, the characteristics of the target company and the market for its securities.

#### **Article 234-7**

The AMF may determine that there is no requirement to file a proposed offer if the thresholds referred to in Articles 234-2 and 234-5 are breached by one or more persons as a result of their having declared themselves to be acting in concert with :

1° one or more shareholders who already held, alone or in concert, the majority of a company's equity or voting rights, provided such shareholders remain predominant ;

2° One or more shareholders that already held, alone or in concert, between one-third and one-half of a company's equity or voting rights, provided that such shareholders maintain a larger holding and that, upon the formation of this concert party, they do not exceed one of the thresholds referred to in Articles 234-2 and 234-5.

As long as the balance of shareholdings within a concert party is not altered significantly relative to the situation at the time of the initial declaration, there is no requirement to make a public offer.

#### **Article 234-8**

The AMF may waive the mandatory filing of a tender offer if the person(s) concerned demonstrate to it that one of the conditions listed in Article 234-9 is met.

The AMF rules after examining the circumstances in which the threshold(s) have been or will be breached, the structure of ownership of the equity and voting rights and, where applicable, the conditions on which the transaction has been or will be approved by a general meeting of the target company's shareholders.

#### **Article 234-9**

The cases in which the AMF may grant a waiver are as follows :

1° Transmission by way of gift between natural persons, or distribution of assets by a legal person in proportion to the rights of its members.

2° Subscription to a capital increase by a company in recognised financial difficulty, subject to the approval of a general meeting of its shareholders.

3° Merger or asset contribution subject to the approval of a general meeting of shareholders.

4° Merger or asset contribution subject to the approval of a general meeting of shareholders, combined with an agreement between shareholders of the companies concerned establishing a concert party.

5° Reduction in the total number of equity securities or voting rights in the target company.

6° Holding of a majority of the company's voting rights by the applicant or by a third party, acting alone or in concert.

7° Resale or other comparable disposal of equity securities or voting rights between companies or persons belonging to the same group.

#### **Article 234-10**

In the case of transactions subject to the approval of the target company's shareholders, the AMF may rule on a waiver application before a general meeting is held, provided it has precise information about the intended transaction.

In the other cases mentioned in Article 234-9 and in the situations referred to in Article 234-7, the AMF may make its ruling before the relevant transaction is carried out, based on the nature, circumstances and timetable of the transaction as well as the supporting documents provided by the person(s) concerned.

The AMF is to be kept informed of the course of events and, if the transaction is not carried out according to the initial terms, may declare its previous decision to be null and void.

Where it grants a waiver or determines that there is no requirement to file an offer, the AMF makes its decision public and discloses any commitments made by the applicant(s).

## CHAPTER V - STANDING MARKET OFFER

### Section 1 - Standing market offers for financial instruments listed on a regulated market

#### Article 235-1

Where a natural or legal person, acting alone or in concert within the meaning of Article 233-10 of the Commercial Code, acquires or agrees to acquire a block of securities that, with the securities or voting rights that the person already holds, confers a majority of a company's equity or voting rights, such person is required to file a proposed standing market offer.

The proposed offer must specify the identity of the seller(s) and acquirer(s) of the block, the quantity of securities sold, the date, method and price of the sale, as well as any additional information needed for a proper appraisal of the transaction.

#### Article 235-2

The acquirer of the block of securities undertakes to acquire in the market, during a period of at least ten trading days, all the securities offered for sale, at the price at which the securities have been or will be sold and only at that price.

The AMF may authorise a lower offer price if the sale includes a guarantee clause covering an identified risk or a deferred payment clause affecting any or all of the relevant payments. In the case of a deferred payment, the discount rate used may not exceed the market rate at the time of sale.

The provisions of Article 232-15 apply to standing market offers.

#### Article 235-3

The AMF may enforce Article 234-2 and apply the ordinary rules governing mandatory offers to a proposed or actual acquisition of one or more blocks of securities conferring a majority of a company's shares or voting rights, in the following cases :

1° The context of the transaction reveals characteristics that could compromise the equality required by the first point of Article 235-2 between the price paid for the majority block and the price offered to other shareholders

2° The block or blocks are acquired from persons that did not previously hold, in concert with each other or with the seller, the majority of the company's voting rights.

In either case, the public offer is implemented in accordance with the simplified procedure described in Point 2° of Article 233-1 if the offeror, after acquiring one or more blocks of securities, holds the majority of the company's equity and voting rights.

### Section 2 - Standing market offers for financial instruments admitted for trading in a multilateral trading facility

#### Article 235-4

Standing market offers for financial instruments admitted for trading in a multilateral trading facility shall be subject to the provisions of Chapter I, except for Section 2. They shall also be subject to Articles 235-1 and 235-2.

## CHAPTER VI - BUYOUT OFFERS WITH SQUEEZE-OUT

#### Article 236-1

Where the majority shareholder(s) hold, in concert within the meaning of Article 233-10 of the Commercial Code, 95 % or more of the voting rights of a company whose shares are or were admitted to trading on a regulated market in a Member State of the European Community or in a State party to the EEA Agreement, including France, any holder of voting equity securities who is not part of the majority group may apply to the AMF to require the majority shareholder(s) to file a draft buyout offer.

Once the AMF has made the necessary verifications, it rules on such application in the light of, inter alia, the state of the market for the securities concerned and the information provided by the applicant.

If the AMF declares the application to be acceptable, it notifies the majority shareholder(s), which must then file a draft buyout offer, within a time limit set by the AMF and drawn up in terms that can be deemed compliant by it.

#### **Article 236-2**

Where the majority shareholder(s) hold, in concert within the meaning of Article 233-10 of the Commercial Code, 95 % or more of the voting rights of a company whose investment certificates and, if applicable, voting rights certificates, are or were admitted to trading on a regulated market in a Member State of the European Community or in a State party to the EEA Agreement, including France, any holder of such certificates who is not part of the majority group may apply to the AMF to require the majority shareholder(s) to file a buyout offer for those securities.

Once it has made the necessary verifications, the AMF rules on such application in the light of, inter alia, the state of the market for the securities concerned and the information provided by the applicant.

If the AMF declares the application to be acceptable, it notifies the majority shareholder(s), which must then file a draft buyout offer, within a time limit set by the AMF and drawn up in terms that can be deemed compliant by it.

#### **Article 236-3**

The majority shareholder(s) holding, in concert within the meaning of Article 233-10 of the Commercial Code, 95 % or more of the voting rights of a company whose shares are or were admitted to trading on a regulated market in a Member State of the European Community or in a State party to the EEA Agreement, including France, may file with the AMF a draft buyout offer for the equity securities, and any other securities giving access to the capital or voting rights in the company, that they do not already hold.

#### **Article 236-4**

The majority shareholder(s) holding, in concert within the meaning of Article 233-10 of the Commercial Code, 95 % or more of the voting rights of a company whose investment certificates and, if applicable, voting rights certificates are or were admitted to trading on a regulated market in a Member State of the European Community or in a State party to the EEA Agreement, including France, may file with the AMF a draft buyout offer for those securities.

#### **Article 236-5**

Where a public limited company (société anonyme) whose equity securities are admitted to trading on a regulated market is converted to a limited partnership with shares (société en commandite par actions), the person(s) that controlled it prior to conversion, or the active partners in the limited partnership with shares, are required to file a draft buyout offer once a resolution regarding the conversion has been adopted at a general meeting of shareholders. The draft offer cannot include a minimum acceptance condition and must be drawn up in terms that can be declared compliant by the AMF.

The offeror informs the AMF whether it reserves the right, depending on the result of the offer, to request that all equity securities and securities giving access to the capital and voting rights of the company be delisted from the regulated market on which they are traded.

#### **Article 236-6**

The natural or legal persons that control a company must inform the AMF :

1° when they intend to ask an extraordinary general meeting of shareholders to approve one or more significant amendments to the company's articles or bylaws, in particular the provisions concerning the company's legal form or disposal and transfer of equity securities or the rights pertaining thereto ;

2° when they decide in principle to proceed with the merger of that company into the company that controls it, sell or contribute all or most of the company's assets to another company, reorient the company's business, or suspend dividends for a period of several financial years.

The AMF evaluates the consequences of the proposed changes in the light of the rights and interests of the holders of the company's equity securities or voting rights and decides whether a buyout offer should be made.

The draft offer cannot include a minimum acceptance condition and must be drawn up in terms that can be declared compliant by the AMF.

#### **Article 236-7**

A public buyout offer is carried out either by purchases in the market at the offer price during a period of at least ten trading days or, if the circumstances and characteristics of the transaction so warrant, by centralising sale and exchange orders with the market operator or, under its supervision, at the sponsoring institution.

The provisions of Articles 232-15, 232-16, 232-18 and 232-19 apply to buyout offers.

However, the issuer of equity securities proposed as consideration in a public buyout offer by way of an exchange may continue to trade in its own securities as part of a share buyback programme provided for in Article L. 225-209 of the Commercial Code.

## CHAPTER VII - SQUEEZE-OUTS

### Section 1 - Squeeze-out following a buyout offer

#### Article 237-1

At the close of a buyout offer carried out in accordance with Articles 236-1, 236-2, 236-3 or 236-4, securities not tendered by minority shareholders or holders of investment certificates or voting rights certificates may be transferred to the majority shareholder or group, provided that they represent not more than 5 % of the shares or voting rights, in return for compensation.

Similarly, securities that give or could give access to capital may be transferred to the majority shareholder or group, provided that the equity securities that could potentially be created, through conversion, subscription, exchange, redemption or any other means, from untendered securities that give or could give access to the company's capital, plus existing but untendered equity securities, do not represent more than 5 % of all the equity securities that exist or that could be created.

#### Article 237-2

Where a buyout offer is filed, the offeror informs the AMF whether it reserves the right to apply for a compulsory buyout once the offer has closed and the result is known, or whether it requests that a compulsory buyout be implemented once the buyout offer has closed.

In support of its proposed buyout offer, the offeror provides the AMF with a valuation of the securities of the target company, carried out using the objective methods applied in cases of asset disposals, that takes into account the value of the company's assets, its past earnings, its market value, its subsidiaries, if any, and its business prospects, according to a weighting appropriate to each case.

The AMF examines the draft offer in accordance with the provisions of Articles 231-21 and 231-22.

#### Article 237-3

Where the AMF declares a proposed buyout offer followed by a squeeze-out to be acceptable, the majority shareholder or group shall place a notice informing the public of the squeeze-out procedure in a newspaper carrying legal notices published in the vicinity of its registered office.

#### Article 237-4

The offeror designates a custody account-keeper to take charge of centralising the compensation payments (hereinafter "the centraliser").

#### Article 237-5

The offeror requesting the squeeze-out deposits the amount corresponding to the compensation for securities not tendered to the public buyout offer in a reserved account with the centraliser.

Compensation is calculated net of all expenses.

#### Article 237-6

Unallocated funds are held by the centraliser for ten years and paid to Caisse des Dépôts et Consignations at the end of this period. These funds are at the disposal of the legal beneficiaries, but revert to the French State after thirty years.

#### Article 237-7

The centraliser, acting on behalf of the majority shareholder or group and throughout the entire period during which it holds the funds, places an annual notice in a newspaper of national circulation inviting former shareholders who have not been compensated to exercise their rights.

Where the centraliser has paid out all frozen funds corresponding to compensation payable to securities holders that did not respond to the public buyout offer, it places an appropriate announcement in a newspaper of national circulation. It is then no longer required to place the annual notice mentioned above.

**Article 237-8**

If, when filing the public buyout offer, the offeror reserved the right to proceed with a squeeze-out after the offer, it informs the AMF within ten trading days of the close of the offer whether it intends so to proceed or waives that right. The offeror's decision is made public by the AMF.

If the offeror decides to proceed with a squeeze-out, it informs the AMF of the price it proposes to pay as compensation. This price cannot be lower than that of the buyout offer, and it shall be higher when events liable to alter the value of the securities concerned have occurred after the offer was declared compliant.

The AMF shall make the mandatory buyout public and specify the terms for implementing it, including the date on which it becomes effective. The time between the decision and the execution of the buyout cannot be less than the time referred to in Article R. 621-44 of the Monetary and Financial Code. This decision shall result in the delisting of the relevant securities from the regulated market where they had been traded.

Custody account-keeping institutions transfer any securities not tendered to the buyout offer into the name of the majority shareholder or group, which pays the corresponding compensation into a reserved account opened for this purpose in accordance with the provisions of Article 237-9.

**Article 237-9**

Where the offeror has chosen to proceed with a squeeze-out in accordance with the provisions of Article 237-8, the freezing of funds and crediting of compensation to holders that have not tendered their securities to the public buyout offer takes place at the date on which the AMF's decision becomes enforceable.

**Article 237-10**

If, when filing the public buyout offer, the offeror applies to the AMF for a squeeze-out to be implemented as soon as the offer closes, regardless of result, the notice published by the market operator to announce the opening of the buyout offer stipulates the conditions applying to the squeeze-out procedure, and in particular the date on which it takes effect.

As soon as the buyout offer closes, the relevant securities are delisted from the regulated market on which they are traded. At the same date, the custody account-keeping institutions transfer any securities not tendered to the buyout offer into the name of the majority shareholder or group, which pays the corresponding compensation into a reserved account opened for this purpose in accordance with the provisions of Article 237-11.

**Article 237-11**

Where the offeror requested a squeeze-out at the time the proposed buyout offer was filed, the funds are frozen the day after the offer closes.

At the date the funds are frozen, the custody account-keeper credits the accounts of securities holders affected by the squeeze-out with the compensation that is due them.

**Article 237-12**

During the offer period of a public buyout offer prior to a squeeze-out, only the investment service provider(s) designated by the offeror are authorised to acquire the securities concerned on the offeror's behalf.

Persons seeking to acquire securities subject to a public buyout offer followed by a squeeze-out must obtain them solely from the investment service provider(s) designated by the offeror.

**Article 237-13**

The sole beneficiaries of the facility whereby the offeror covers brokerage commissions up to an amount set by it, including, where applicable, stamp duty, shall be those sellers whose securities were registered on their account prior to the opening of :

- 1° a simplified tender offer in which the offeror has explicitly declared its intention, if it obtains 95 % of the voting rights of the target company, to request initiation of a public buyout offer followed by a squeeze-out ; or
- 2° a public buyout offer followed by a squeeze-out.

To this end, and in connection with the simplified tender offer referred to in Point 1°, the market operator concerned puts in place a procedure for centralising orders placed in response to such offer.

Requests for refunds must be accompanied by documentary evidence of the sellers' rights.



## Section 2 - Squeeze-out following any public offer

### Article 237-14

Without prejudice to the provisions of Article 237-1, following any public offer and within three months of the close of the offer, securities not tendered by minority shareholders may be transferred to the offeror, provided that they represent not more than 5 % of the shares or voting rights, in return for compensation.

Similarly, securities that give or could give access to capital may be transferred to the offeror, provided that the equity securities that could potentially be created, through conversion, subscription, exchange, redemption or any other means, from untendered securities that give or could give access to the company's capital, plus existing but untendered equity securities, do not represent more than 5 % of all the equity securities that exist or that could be created.

Implementation of the squeeze-out procedure provided for in this article is subject to the provisions of Articles 237-4 to 237-7 and to the following provisions.

### Article 237-15

When it files the draft offer, the offeror informs the AMF whether it reserves the right, depending on the result of the offer, to implement a squeeze-out.

### Article 237-16

I. - The AMF rules on whether the proposed squeeze-out is compliant, in accordance with Articles 231-21 and 231-22, except in one of the following two cases and provided that the squeeze-out includes the cash settlement proposed in the last offer :

1° the squeeze-out follows a public offer subject to the provisions of Chapter II ;

2° the squeeze-out follows a public offer for which the AMF has the valuation mentioned in Part II of Article L. 433-4 of the Monetary and Financial Code and the report by the independent appraiser mentioned in Article 261-1.

II. - Where the AMF rules on whether the squeeze-out is compliant, the offeror provides, in support of its proposed squeeze-out, a valuation of the securities of the target company, carried out using the objective methods applied in cases of asset disposals, that takes into account the value of the company's assets, its past earnings, its market value, its subsidiaries, if any, and its business prospects, according to a weighting appropriate to each case.

Where a squeeze-out is to be implemented, the parties concerned must draw up a draft squeeze-out document in accordance with the conditions and procedures set out in Articles 231-16 to 231-20, except for the description of the offeror's intentions for the next twelve months. The squeeze-out document(s) are submitted to the AMF for approval in accordance with Articles 231-20 and 231-26 and made available to the public in accordance with Article 231-27.

Disclosures providing information on the legal, financial, accounting and other characteristics of the target company are filed with the AMF and made publicly available in accordance with the conditions and procedures set out in Articles 231-28 to 231-30. Content requirements for these disclosures are stipulated in an AMF instruction.

III. - Where the AMF does not rule on whether the squeeze-out is compliant, the offeror informs the AMF of its intention to implement the squeeze-out. The AMF publishes the implementation date for the squeeze-out. The offeror publishes a news release in accordance with Article 221-3 and is responsible for its distribution. Content requirements for these news releases are stipulated in an AMF instruction.

### Article 237-17

Where the AMF declares a draft squeeze-out to be compliant or where the AMF does not rule on whether the squeeze-out is compliant when the majority shareholder or group informs the AMF of its intention to proceed with a squeeze-out, the shareholder or group shall place a notice informing the public of the squeeze-out in a newspaper carrying legal notices published in the vicinity of its registered office.

### Article 237-18

The statement of compliance shall specify the date on which it becomes enforceable. The time period between the release and the enforcement of the statement cannot be less than the time period referred to in Article R. 621-44 of the Monetary and Financial Code.

The statement shall result in the delisting of the relevant securities from the regulated market where they are traded. The freezing of funds and crediting of compensation to holders that have not tendered their securities to the public offer takes place at the date on which the AMF's statement becomes enforceable.

Where the AMF does not rule on whether the squeeze-out is compliant, the provisions of the preceding paragraph shall apply as from implementation of the squeeze-out.

Custody account-keeping institutions transfer any securities not tendered to the last offer into the name of the majority shareholder or group, which pays the corresponding compensation into a reserved account opened for this purpose in accordance with the provisions of Article 237-5.

#### **Article 237-19**

As soon as the statement of compliance becomes enforceable, or, if the AMF does not rule on compliance, as soon as the squeeze-out is implemented, the relevant securities are delisted from the regulated market where they are traded. At the same date, the custody account-keeping institutions transfer any securities not tendered to the buyout offer into the name of the majority shareholder or group, which pays the corresponding compensation into a reserved account opened for this purpose in accordance with the provisions of Article 237-11.

### **CHAPTER VIII - PUBLIC OFFERS FOR DEBT SECURITIES THAT DO NOT GIVE ACCESS TO EQUITY**

#### **Article 238-1**

This chapter applies to public offers for debt securities that do not give access to capital issued by a company whose registered office is in France and that are admitted to trading on a French regulated market.

The AMF may apply the provisions of this chapter to public offers for securities that are issued by companies whose registered offices are not located in a Member State of the European Community or a State party to the EEA Agreement and that are admitted to trading on a French regulated market.

#### **Article 238-2**

The principles mentioned in Article 231-3 apply to public offers for debt securities that do not give access to equity.

#### **Article 238-3**

Public offers for debt securities that do not give access to equity require only a draft offer document to be filed with the AMF.

#### **Article 238-4**

The parties concerned must comply with the rules of this Title from the time that the offeror files a draft offer document until the outcome of the offer is made public.

#### **Article 238-5**

The parties concerned, their officers and directors and their advisers must observe the provisions of Article 231-36.

#### **Article 238-6**

The draft offer document is filed with the AMF in accordance with Article 231-13 and made publicly available in accordance with the conditions and procedures mentioned in Parts I and II of Article 231-16. The document should include the words given in Part IV of the same article.

#### **Article 238-7**

Upon filing of the draft offer document with the AMF, a news release thereon is issued in accordance with Article 231-16, and the target company may issue a news release in accordance with Article 231-17.

The AMF may request any disclosure that it deems necessary.

#### **Article 238-8**

The draft offer document, which must meet the content requirements specified in an AMF instruction, mentions :

1° the identity of the offeror ;

2° the nature of its offer, including in particular :

- a) the proposed price or exchange ratio, with a precise statement of all information needed to understand the calculation ;
- b) the number and type of the securities that it promises to acquire ;

- c) the number of securities of the same class that it already holds and/or has already bought ;
- d) if applicable, the number of securities tendered to the offer below which the offer will not be successful ;
- e) the terms of financing for the transaction and the impact of those terms on the assets, activities and financial results of the companies concerned.

3° The opinion and reasons therefor of the Board of Directors or Supervisory Board, or, in the case of a foreign company, the competent governing body, regarding the benefits of the offer or its consequences for the target company, its shareholders and employees ; the voting procedures by which this opinion was obtained, and whether dissenting members could request that their identity and position be mentioned.

4° the procedures for publicly disclosing the information mentioned in Article 231-28.

This document also indicates the opinion of the independent appraiser on the fairness of the proposed price or exchange ratio, or the opinion of the sponsoring institutions on the consistency of the proposed price or exchange ratio with market conditions.

The offer document must bear the signature of the legal representative of the offeror and, where applicable, the legal representatives of the sponsoring institutions-with the requirements of Article 231-18.

Where the offer document is drawn up jointly, it must also bear the signature of the legal representative of the target company and include a certification by its statutory auditors as specified in Article 231-21.

The offer document is submitted for AMF approval and made public according in accordance with Articles 231-20, 231-26 and 231-27.

#### **Article 238-9**

Disclosures providing information on the legal, financial, accounting and other characteristics of the offeror and the target company are filed with the AMF and made publicly available in accordance with the conditions and procedures set out in Articles 231-28 to 231-30. Content requirements for these disclosures are stipulated in an AMF instruction.

#### **Article 238-10**

Any additional information not included in the offer document approved by the AMF must be made public in a news release. The author of the release shall ensure that it is distributed in full.

#### **Article 238-11**

Tender offers for debt securities may be exempted from the requirement to file an offer document under the conditions mentioned in Article 231-24.

#### **Article 238-12**

Member States of the Organisation for Economic Co-operation and Development and public international bodies of which France is a member, are not required to prepare the draft offer document mentioned in Article 238-3.

## **TITLE IV - BUYBACK PROGRAMMES FOR SHARES LISTED ON A REGULATED MARKET AND TRANSACTION REPORTING**

### **Article 241-1**

The provisions of this title shall apply to companies listed on a regulated market that carry out share buyback programmes in accordance with Articles L. 225-209 and L. 225-217 of the Commercial Code.

The shall also apply to all issuers of securities equivalent to those mentioned above, issued under foreign law and listed on a regulated market.

### **Article 241-2**

I. - Before engaging in a share buyback programme, issues must publish a description of the programme in accordance with Article 221-3, including :

- 1° the date of the shareholders' meeting that authorised or has been called to authorise the programme ;
- 2° the number of shares and the percentage of the share capital that the issuers holds directly and indirectly ;
- 3° the division of shares held by purpose on the date of the publication of the description of the programme ;
- 4° the objective(s) of the share buyback programme that correspond to the provisions of European Commission Regulation no. 2273/2003 of 22 December 2003 or to the market practices accepted by the AMF.
- 5° the maximum percentage of the share capital, the maximum number of shares and the characteristics of the shares that the issuer intends to buy back, along with the maximum purchase price ;
- 6° the term of the share buyback programme ;
- 7° the transactions to acquire, sell or transfer shares through a regulated market or off the market, distinguishing cash transactions, derivative transactions and open positions according to the summary reporting table provided in an AMF instruction, as part of the previous share buyback programme up to the date of the publication of the description of the programme.

II. - During the term of the share buyback programme, any material change to any of the information stipulated in Section I must be made public in accordance with Article 221-3, as soon as possible.

### **Article 241-3**

I. - Issuers shall not be required to include the information referred to in Points 1° to 3° in Section I of Article 241-2 in their description of the share buyback programme if they publish the special report referred to in Article L. 225-209 of the Commercial Code in accordance with the procedures set out in Article 221-3.

II. - Issuers shall not be required to include the programme description, if they publish the special report referred to in Article L. 225-209 of the Commercial Code in accordance with the procedures set out in Article 221-3 and this report contains all of the information required for the programme description, and, if the report is not published immediately, any new material facts emerging since the description was drafted.

III. - The issuer shall not be required to publish the programme description if the offer document drawn up under the provisions of Article 212-13 includes all of the information that needs to be in the programme description under the terms of Article 241-2.

### **Article 241-4**

I. - Issuers in the course of carrying out a share buyback programme :

1° Shall notify the market of all transactions carried out as part of the share buyback programme by the seventh trading day after their execution. This information, prepared in accordance with an AMF instruction, shall be posted to the issuer's website ;

2° shall notify the AMF at least once a month of :

- a) cancellations of shares, since the last report and for the twenty-four month period before the announcement date, specifying the number and the characteristics of the cancelled shares, as well as the date the cancellation takes place ;
- b) transactions executed on the regulated market or off market to acquire, sell or transfer shares, distinguishing between cash transactions and derivative transactions during the period since the last report and during the period since the start of the share buyback programme ;

c) open derivative positions on the reporting date.

The information is defined in the reporting tables provided in an AMF instruction.

II. - The provisions of Point 1° of Section I shall not apply to transactions carried out by an investment service provider under a liquidity contract that complies with the AMF decision of 22 March 2005 on the acceptance of liquidity contracts as a market practice that the AMF deems acceptable ;

If the issuer sends the AMF all of the information required for the monthly report referred to in Point 2° of Section I, at the same time as the report referred to in Point 1° of Section I, it shall not be subject to Point 2° of Section I.

#### **Article 241-5**

Persons holding more than 10 % of the issuer's share capital, as well as the issuer's directors, must report the number of securities that they have sold to the issuer.

#### **Article 241-6**

By the time the next Shareholders' Meeting is held, the issuers shall allocate the shares acquired before 13 October 2004 that they own directly or indirectly, according to the definition of the first paragraph of Article L. 225-210 of the Commercial Code, to either the objectives set out in European Commission Regulation no. 2273/2003 of 22 December 2003 or to the market practices accepted by the AMF.

Issuers may also use this time to decide to sell the shares through an investment service provider acting independently. An AMF instruction shall specify the general requirements for executing such sales and the reporting requirements for them.

### **TITLE V - MARKETING IN FRANCE OF FINANCIAL INSTRUMENTS TRADED ON A RECOGNISED FOREIGN MARKET OR A REGULATED MARKET OF THE EUROPEAN ECONOMIC AREA (EEA)**

#### **Article 251-1**

Information provided to the public, regardless of the medium, with a view to trading in financial instruments on a recognised foreign market or regulated market of the European Economic Area must be accurate, precise and truthful. It must contain no false or deceptive statement that could mislead the client.

#### **Article 251-2**

Products proposed through an act of solicitation shall be suitable to the members of the public being solicited.

If there is no adequate assurance that clients are being informed of the associated risks, the AMF may order the interested party or any other person taking part in the distribution of such products, in any way, to halt the marketing or trading thereof.

#### **Article 251-3**

Before any transaction on a recognised foreign market in financial instruments, the market operator that runs that market shall draw up a disclosure document in the market itself and the various financial instruments that it proposes. This disclosure document, in French, must be made available to financial intermediaries by the market operator. It shall state or describe the following :

1° the foreign market is recognised by the Minister for the Economy, under the terms of Article D. 423-1 of the Monetary and Financial Code.

2° The various ways in which orders are placed and executed, when these have consequences for the person initiating the order.

3° The legal nature of the products, the technical characteristics thereof and, if applicable, the evidence supporting the advertised risks and returns.

4° The validity date of the aforementioned information.

This disclosure document must be provided by the financial intermediary to each prospective client, or transmitted to him electronically, before the placing of the client's first order to buy or sell a financial instrument admitted to trading on the recognised foreign market.

For transactions on a market in derivative financial instruments, if the client does not trade on that market in the ordinary course of business, this document must be sent by registered letter with return receipt, or via the Internet, with the financial intermediary recording the date on which the client viewed or downloaded it.

No one may receive, directly or indirectly, orders or funds from the client until seven days after the date that the disclosure document was delivered, viewed onscreen or downloaded, or before the financial intermediary has received a certification bearing the handwritten or electronic signature of the client and stating, "I have read the disclosure document relating to {name of the recognised market}, transactions on that market, and the commitments that I will take on by virtue of my participation in such transactions." This waiting period applies only to the first order, however.

#### **Article 251-4**

Before any transaction on a regulated market in derivative financial instruments in the European Economic Area, and in compliance with the obligations of Section 3 of Chapter I of Title 2 of Book III, the financial intermediary shall provide or transmit electronically to each client the following information :

- 1° A statement that the regulated market in derivative financial instruments appears on the list of regulated markets of the European Economic Area published in the Official Journal of the European Union.
- 2° The various ways in which orders are placed and executed, when these have consequences for the client.
- 3° The legal nature of the products, the technical characteristics thereof and, if applicable, the evidence supporting the announced risks and returns.

If the client does not trade in the market in question in the ordinary course of business, no one may receive orders or funds from him, directly or indirectly, before the financial intermediary has received a certification bearing his signature and stating, "I have read the disclosure document relating to {name of the EEA regulated market in derivative financial instruments}, transactions on that market, and the commitments that I will take on by virtue of my participation in such transactions." This certification is needed only for the first order.

#### **Article 251-5**

Any advertisement or message disseminated by the foreign market must include the information that it has been recognised by the Minister for the Economy, under the terms of Article D. 423-1 of the Monetary and Financial Code, or that it is on the list of regulated markets in the European Economic Area published in the *Official Journal of the European Union*.

All advertisements or messages disseminated by the financial intermediary with a view to trading in financial instruments on a recognised foreign market must contain the following information :

- 1° Name, address, legal form of the person referred to in Article D. 423-3 of the Monetary and Financial Code, making a public offering ;
- 2° Name and address of that person's correspondent in France, if applicable.
- 3° The identity of the foreign authority that has authorised that person to conduct a financial activity.
- 4° A statement that the foreign market has been recognised by the economy minister of France pursuant to Article 1 of the aforementioned Decree.
- 5° The minimum term, if any, of the recommended investments.
- 6° The law that will apply in the event of a dispute, and the courts competent to hear such dispute.
- 7° The availability of an arbitration procedure, if applicable.

All advertisements or messages disseminated by the financial intermediary with a view to trading on a regulated market in derivative financial instruments of the European Economic Area must mention that the market appears on the list of such markets published in the *Official Journal of the European Union*.

#### **Article 251-6**

The AMF :

- 1° Shall receive, for information, the disclosure document drawn up by the market operator that runs the recognised foreign market.
- 2° Shall request that all recognised foreign markets keep it informed of any substantial changes in the way they operate and send it data on their activities in French territory, as specified in an AMF instruction.

3° May require the market operator that runs a recognised foreign market to make available to the AMF all information needed to support the claims or statements appearing in the disclosure document provided for in Article 251-3 and, if need be, may request modification thereof.

4° May require any person referred to in Article D. 423-3 of the Monetary and Financial Code to produce any elements likely to support the claims or representations made in the advertisements or messages referred to in Article 251-4, and to require their amendment, as needed.

#### **Article 251-7**

Only Articles 251-1, 251-2, 251-4 and 251-5 apply to recognised markets in derivative financial instruments on commodities in the European Economic Area, when such market is operated by a market operator that also runs a regulated market in the derivative financial instruments appearing on the list of such markets published in the Official Journal of the European Union.

## **TITLE VI - FAIRNESS OPINIONS**

### **CHAPTER I - APPOINTING AN INDEPENDENT APPRAISER**

#### **Article 261-1**

I. - The target company of a takeover bid shall appoint an independent appraiser if the transaction is likely to cause conflicts of interest within its Board of Directors, Supervisory Board or governing body that could impair the objectivity of the reasoned opinion mentioned in Article 231-19 or jeopardise the fair treatment of shareholders or bearers of the financial instruments targeted by the bid.

The situations described below, in particular, constitute such cases :

1° if the target company is already controlled by the offeror, within the meaning of Article L. 233-3 of the Commercial Code, before the bid is launched ;

2° if the senior managers of the target company or the persons that control it, within the meaning of Article L. 233-3 of the Commercial Code, have entered into an agreement with the offeror that could compromise their independence ;

3° if the controlling shareholder, within the meaning of Article L. 233-3 of the Commercial Code, does not tender its securities to a buyback offer launched by the company for its own securities ;

4° if the offer is related to one or more transactions that could have a significant impact on the price or exchange ratio of the proposed offer ;

5° if the offer pertains to financial instruments in multiple categories and is priced in a way that could jeopardise the fair treatment of shareholders or bearers of the financial instruments targeted by the bid ;

6° if the non-equity financial instruments mentioned in Point 1° of Part I of Article L. 211-1 of the Monetary and Financial Code that give or could give direct or indirect access to the capital or voting rights of the offeror or of a company belonging to the offeror's group are provided as consideration for the takeover of the target company.

II. - The target company shall also appoint an independent appraiser before implementing a squeeze-out, subject to the provisions of Article 237-16.

#### **Article 261-2**

Any issuer that carries out a reserved capital increase at a discount to the market price greater than the maximum discount authorised for capital increases without pre-emptive subscription rights and giving a shareholder, acting alone or in concert within the meaning of Article L. 233-10 of the Commercial Code, control over the issuer within the meaning of Article L. 233-3 of the aforementioned code, shall appoint an independent appraiser who will apply the provisions of this title.

#### **Article 261-3**

Any issuer or offeror carrying out a takeover bid may appoint an independent appraiser who will apply the provisions of this title.

**Article 261-4**

I. - The independent appraiser must not be placed in a conflict of interest in relation to the parties concerned by the public offer or transaction and their advisors. An AMF instruction shall describe situations in which the independent appraiser is considered to be placed in a conflict of interest, although this shall not constitute an exhaustive list.

The independent appraiser shall not work repeatedly with the same sponsoring institution(s) or within the same group if the regular nature of such work could compromise his independence.

II. - The appraiser shall prepare a statement certifying that there are no known past, present or future ties between him and the parties concerned by the offer or transaction and their advisors that could compromise his independence or impair the objectivity of his assessment when carrying out the appraisal.

If there is the risk of a conflict of interest but the appraiser deems this unlikely to compromise his independence or impair the objectivity of his assessment, he shall mention this risk in his statement, including relevant supporting information.

**CHAPTER II - APPRAISAL REPORT****Article 262-1**

I. - The independent appraiser prepares a report on the financial terms of the offer or transaction. Content requirements for the report are set out in an AMF instruction. In particular, the report contains the statement of independence mentioned in Part II of Article 261-4, a description of the verifications performed and a valuation of the company in question. The report's conclusion takes the form of a fairness opinion.

No other type of opinion shall count as a fairness opinion.

II. - Once appointed, the appraiser must have sufficient time to prepare the report mentioned in Part I, taking into account the complexity of the transaction and the quality of the information provided to him. The appraiser shall have at least fifteen trading days to prepare his report.

**Article 262-2**

I. - In the cases provided for in Article 261-2, the issuer shall distribute the report by the independent appraiser at least ten trading days before the general meeting convened to authorise the transaction, or, where the meeting has exercised its powers of delegation, as soon as possible after the decision by the Board of Directors or Management Board. The report shall be distributed by :

1° making it available free of charge at the issuer's registered office ;

2° publishing a news release in accordance with Article 221-3 ;

3° publishing it on the issuer's website.

II. - An issuer that appoints an independent appraiser pursuant to Article 261-3 shall follow the procedures set forth in Part I when publishing the appraiser's report.

**CHAPTER III - RECOGNITION OF PROFESSIONAL ASSOCIATIONS****Section 1 - Requirements for AMF recognition****Article 263-1**

A professional association of independent appraisers may be recognised, at its request, by the AMF.

**Article 263-2**

I. - The professional association shall draw up a code of conduct setting out the basic principles with which its members must comply.

Members of the association may adapt these principles to reflect their size and organisation.

II. - The code of conduct shall set out, inter alia :

1° the principles governing the independence of appraisers ;

2° the expertise and resources that appraisers must have ;



3° the rules of confidentiality to which they are subject ;

4° procedures for taking on and carrying out appraisals and quality controls to verify work done by association members.

III. - The code of conduct shall detail the disciplinary action applicable in the event of breaches.

IV. - The code of conduct may be consulted at any time at the association's registered office by any person who so requests. The code shall also be published on the association's website provided the association has such a site.

#### **Article 263-3**

The association must have the staff and technical resources needed to carry out its mission on an ongoing basis.

The technical resources shall include, inter alia, a data storage facility for the retention of documents, in particular reports by independent appraisers belonging to the association, for at least five years.

### **Section 2 - Recognition procedure**

#### **Article 263-4**

Recognition of a professional association shall be subject to prior filing of an application with the AMF containing :

1° the articles (*statuts*) of the association ;

2° a *curriculum vitae* and an extract from the judicial record (*casier judiciaire*) for each of the association's legal representatives ;

3° a three-year projected budget for the association ;

4° a draft code of conduct ;

5° a description of the human and technical resources that will enable the association to meet its obligations under this chapter.

#### **Article 263-5**

In deciding whether to recognise an association, the AMF shall review the application mentioned in Article 263-4 to assess whether the association, based on its filing, fulfils the conditions set forth in Articles 263-2 and 263-3. The AMF may ask the association to provide any further information it considers necessary to reach its decision.

### **Section 3 - Reporting to the AMF**

#### **Article 263-6**

The association shall inform the AMF promptly of any changes in key items in the initial application for recognition, notably concerning its senior management, organisation or supervision.

#### **Article 263-7**

The association shall inform the AMF promptly of disciplinary action taken against any of its members and shall make available to the AMF the minutes of meetings by the management bodies and general meetings of shareholders.

#### **Article 263-8**

I. - The AMF may revoke its recognition of an association if said association no longer meets the conditions of its initial recognition.

When the AMF is considering revocation, it shall so inform the association and shall tell it the reasons therefor. The association shall have one month from receipt of such notification to submit any observations it may have.

II. - When the AMF decides to revoke its recognition, the association shall be notified of this by registered letter with return receipt. The AMF shall inform the public of the revocation by means of a news release posted on its website.

The decision shall specify the timetable and method for implementing the revocation. The association must inform its members that its authorisation has been revoked.



# GENERAL REGULATION OF THE AUTORITÉ DES MARCHÉS FINANCIERS



## BOOK III - SERVICE PROVIDERS

### TITLE I - INVESTMENT SERVICES PROVIDERS

#### CHAPTER I - PROCEDURES FOR AUTHORISATION, PROGRAMME OF OPERATIONS AND PASSPORT

##### Section 1 - Portfolio management companies

###### SUB-SECTION 1 - AUTHORISATION AND PROGRAMME OF OPERATIONS

###### Paragraph 1 - Authorisation

###### Article 311-1

The authorisation of a portfolio management company referred to in Article L. 532-9 of the Monetary and Financial Code requires submission to the AMF of an application specifying the scope of the authorisation, together with a file that complies with the model provided for in Article R. 532-10 of the Monetary and Financial Code.

The file shall include a programme of operations for each of the services that the portfolio management company intends to provide, specifying the conditions in which it expects to provide those services and indicating the type of transactions envisaged and its organisational structure. The AMF issues an acknowledgement of receipt when it receives this file.

The procedure and the terms and conditions of authorisation, along with the content of the programme of operations shall be set forth in an AMF instruction.

###### Article 311-2

In deciding whether to grant authorisation to a portfolio management company, the AMF shall review the items in the file referred to in Article 311-1, along with the items set forth in Chapter II of this Title. The AMF may require the applicant to produce any additional information it needs to make its decision. The AMF shall outline the scope of the authorisation.

The AMF shall reach a decision on the application within three months of receiving the file. If need be, this deadline shall be suspended until any additional information requested has been received.

###### Article 311-3

The portfolio management company shall inform the AMF, in accordance with the procedures to be specified in an AMF Instruction, of any changes in key items in the original request for authorisation, notably concerning direct or indirect share ownership, senior management, organisational structures and the items referred to in Section 2 of Chapter II. The AMF shall inform the company in writing of any consequences that such changes may have on the authorisation.

## **Paragraph 2 - Withdrawal of authorisation and deregistration**

### **Article 311-4**

Except in cases where the company requests withdrawal, the AMF, whenever it envisages withdrawing a management company's authorisation pursuant to Article L. 532-10 of the Monetary and Financial Code, shall so inform the company, specifying the reasons for which such decision is envisaged. The company shall have one month from receipt of such notification to submit any observations it may have.

### **Article 311-5**

When the AMF decides to withdraw an authorisation, the company concerned shall be notified of the AMF's decision by registered letter with acknowledgement of receipt. The AMF shall inform the public of the withdrawal by inserting notices in newspapers or other publications of its choosing.

The decision shall specify the timetable and method for implementing the withdrawal. During this period, the company shall be put under the supervision of an administrator designated by the AMF from among current or former officers of companies authorised to manage collective investment schemes or portfolios for third parties.

The administrator shall be bound by the obligation of professional secrecy. If he or she manages another company, said company may not acquire the clientele directly or indirectly.

During this period, the company may make only such transactions as are strictly necessary to protect its clients' interests. The company shall inform its clients and the custodian(s) of the portfolios under discretionary management of the withdrawal of its authorisation. It shall ask its clients in writing to request transfer of their accounts to another investment services provider, or to request liquidation of their portfolios, or to assume the management thereof themselves. For common funds (FCPs), the AMF shall invite the custodian to appoint another manager. For employee investment funds (FCPEs), this appointment shall be subject to ratification by the supervisory board of each fund.

### **Article 311-6**

When the AMF deregisters the company pursuant to Article L. 532-12 of the Monetary and Financial Code, the AMF shall notify the company of its decision in accordance with the conditions stipulated in Article 311-5. The AMF shall inform the public by inserting notices in newspapers or other publications of its choosing.

## **SUB-SECTION 2 - PASSPORT**

### **Article 311-7**

A portfolio management company seeking to do business under the freedom to provide services, or to open a branch office under the right of establishment, in another State party to the European Economic Area agreement, shall notify the AMF of its plans in accordance with Articles R. 532-24, R. 532-25, R. 532-28, R. 532-29, R. 735-6, R. 745-6, R. 755-6 and R. 765-6 of the Monetary and Financial Code and in accordance with an AMF Instruction.

## **Section 2 - Investment services providers providing portfolio management service for third parties as an ancillary service or investment advice service**

### **SUB-SECTION 1 - APPROVAL OF THE PROGRAMME OF OPERATIONS**

#### **Article 311-8**

When an investment services provider, other than a portfolio management company, plans to provide portfolio management services for third parties, its programme of operations shall be presented in accordance with the requirements in Article 311-1.

When an investment services provider, other than a portfolio management company, plans to provide investment advice services, its programme of operations shall be presented in accordance with the file referred to in Article R. 532-1 of the Monetary and Financial Code.

#### **Article 311-9**

If the AMF finds that an investment services provider no longer meets the conditions for the approval of its programme of operations or that it no longer engages in the business of management, it shall so inform the Comité des Établissements de Crédit et des Entreprises d'Investissement.

**SUB-SECTION 2 - PASSPORT****Article 311-10**

The information provided for in Article R. 532-20 of the Monetary and Financial Code shall include the items specified by the Instruction referred to in Article 311-7.

**Section 3 - Investment services providers that do not provide portfolio management service for third parties or investment advice service****SUB-SECTION 1 - AMF OBSERVATIONS ON REQUESTS FOR AUTHORISATION****Article 311-11**

In connection with the examination by the Comité des Établissements de Crédit et des Entreprises d'Investissement or the authorisation request, and before such authorisation is granted, the AMF shall examine the applicant's file in accordance with Article R. 532-4 of the Monetary and Financial Code.

The AMF shall ensure that the intended resources are appropriate to the envisaged activities.

**SUB-SECTION 2 - PASSPORT****Article 311-12**

The AMF shall examine the draft notification in accordance with the requirements in Articles R. 532-20 and R. 532-26 of the Monetary and Financial Code.

**CHAPTER II - AUTHORISATION REQUIREMENTS FOR PORTFOLIO MANAGEMENT COMPANIES****Section 1 - Authorisation requirements****Article 312-1**

The AMF shall seek the opinion of the competent authorities of another State party to the European Economic Area agreement in cases where the portfolio management company meeting the requirements of Directive 85/611/EEC of 20 December 1985 is :

- 1° A subsidiary of a portfolio management company meeting the requirements of Directive 85/611/EEC of 20 December 1985 and authorised in another State party to the European Economic Area agreement ;
- 2° A subsidiary of the parent company of another portfolio management company meeting the requirements of Directive 85/611/EEC of 20 December 1985 in another State party to the European Economic Area agreement ;
- 3° Controlled by the same natural or legal persons as another portfolio management company meeting the requirements of Directive 85/611/EEC of 20 December 1985 and authorised in another State party to the European Economic Area agreement.

**Article 312-2**

The portfolio management company shall have its registered office in France. It may be incorporated in any form, subject to a review of its constitutive rules, and provided its accounts are subject to a statutory audit.

**Article 312-3**

I. - The share capital of a portfolio management company must be at least EUR 125,000 and must be fully paid in cash at least to this minimum amount.

II. - When authorisation is granted and in subsequent financial years, the portfolio management company must be able to prove at any time that its capital is at least equal to the higher of the two amounts specified in Points 1° and 2° below :

1° EUR 125,000 plus an amount equal to 0.02 % of assets under management by the portfolio management company in excess of EUR 250 million.

The total capital requirement shall not exceed EUR 10 million.

The assets included in the calculation of the additional capital requirement referred to in the third paragraph are :

a) Assets of open-ended investment companies (*sociétés d'investissement à capital variable*, SICAVs) that have delegated the management of their portfolio to the portfolio management company.

b) Assets of common funds (*fonds communs de placement*, FCPs) managed by the portfolio management company, including portfolios for which it has delegated management to another, but excluding portfolios that it manages on a delegated basis.

c) Investment funds managed by the portfolio management company, including portfolios for which it has delegated management to another entity, but excluding portfolios that it manages on a delegated basis.

Up to 50 % of the additional capital requirement may be met by a guarantee given by a credit institution or insurance undertaking having its registered office in another State party to the European Economic Area agreement, or in another State, provided the guarantor is subject to prudential rules that the AMF deems equivalent to those applicable to credit institutions and insurance undertakings having their registered offices in States parties to the European Economic Area agreement.

2° One-quarter of general operating expenses for the preceding financial year.

III. - The capital requirement at the time of authorisation shall be calculated on the basis of forecast data.

For subsequent years, the amount of general operating expenses and the total value of portfolio assets used to determine the capital requirement shall be calculated on the basis of the most recent of the portfolio management company's financial statements for the preceding financial year, interim statement of financial position certified by the statutory auditor, or the data sheet referred to in Article 313-53-1.

The accounting items that make up the general operating expenses, capital and portfolios of a portfolio management company shall be specified in an AMF instruction

#### **Article 312-4**

Investments made for purposes of managing the company's capital must not be such as to jeopardise its compliance with the minimum capital requirement set forth in Article 312-3. Regarding the portion covered by the minimum capital requirement, investments must be prudent and may not include speculative positions, in accordance with an AMF instruction.

#### **Article 312-5**

The portfolio management company shall disclose the identities of its direct or indirect shareholders as well as the amounts of their holdings. The AMF shall assess the quality of the company's shareholders having regard to the need for sound and prudent management and proper performance of its own supervisory responsibilities. It shall make the same assessment of partners and members in an economic interest grouping.

An AMF Instruction shall specify the nature of ownership links or direct or indirect control between the portfolio management company and other natural or legal persons that could impede the AMF's supervisory tasks.

#### **Article 312-6**

The portfolio management company shall be effectively directed by at least two persons of sufficiently good repute and sufficient experience for their duties, so as to ensure sound and prudent management.

At least one of these two persons must be a company officer with the power to represent the company in its dealings with third parties.

The other person may be the chairman of the board of directors or a person specifically empowered by the company's governing bodies or bylaws to direct the company and determine its policies.

#### **Article 312-7**

By way of derogation from Article 312-6, a portfolio management company may be effectively managed by a single person in the following conditions :

1° The portfolio management company does not manage UCITS complying with Directive 85/611/EEC of 20 December 1985 ;

2° The total assets managed by the portfolio management company amount to less than EUR 20 million or, if such amount is higher, the management company is authorised solely to manage venture capital funds with streamlined investment rules ;

3° The governing bodies or bylaws of the portfolio management company empower a person to replace the manager immediately and perform all his duties if he himself is unable to perform them ;

4° The person appointed pursuant to Point 3° shall be of sufficiently good repute and have sufficient experience to carry out the function of manager so as to ensure sound and prudent management of the portfolio management company. He must have the necessary availability to replace the manager.

## **Section 2 - Content of the programme of operations**

### **Article 312-8**

The portfolio management company shall have a programme of operations that complies with the provisions of Chapter III, except for the provisions of Sub-section 5 of Section 1 of said Chapter, which shall not apply to it.

Whenever a portfolio management company manages at least one undertaking for collective investment in transferable securities (UCITS) as defined in Directive 85/611/EEC of 20 December 1985, the portfolio management company in question may not provide any other investment services than the portfolio management service referred to in Point 4° of Article L. 321-1 of the Monetary and Financial Code and the investment advice service referred to in Point 5° of the same article.

### **Article 312-9**

A portfolio management company may hold equity interests in credit institutions, investment firms, management companies of real estate investment companies, securitised debt funds and forestry investment companies, insurance companies, companies formed to manage retirement savings, and undertakings in the business of providing one or more of the services listed in Article L. 321-2 of the Monetary and Financial Code. It may also hold equity interests in companies set up for purposes that represent an extension of its own activities.

### **Article 312-10**

I. - In deciding whether to issue the authorisation referred to in Article L. 214-35-6 of the Monetary and Financial Code, the AMF shall also ensure that :

1° The applicant's programme of operations specifies, *inter alia* :

- a) The procedures for forming each of the contractual collective investment schemes established by the portfolio management company ;
- b) The procedures for defining and verifying the contractual rules of each such collective investment scheme and overseeing the enforcement of the rules ;
- c) The human and technical resources required to monitor and supervise the formation and operation of these collective investment schemes ;

2° The portfolio management company has a programme of operations as referred to in Article R. 214-34 of the Monetary and Financial Code, whenever said company seeks to manage contractual collective investment schemes whose liabilities within the meaning of II of Article R. 214-12 of the Monetary and Financial Code exceed the value of their assets.

II. - If a collective investment scheme is split pursuant to the second paragraph of Article L. 214-19 or the second paragraph of Article L. 214-30 of the Monetary and Financial Code, the authorisation granted to the scheme's management company permits it to manage the contractual scheme that has been created by the split in order to house the assets whose disposal would not be in the best interests of the holders of shares or units of the split scheme.

## **CHAPTER III - ORGANISATIONAL RULES**

### **Section 1 - Organisational rules applying to all investment services providers**

#### **SUB-SECTION 1 - COMPLIANCE SYSTEM**

#### **Paragraph 1 - General provisions**

### **Article 313-1**

Investment services providers shall establish and maintain appropriate operational policies, procedures and measures to detect any risk of non-compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code and the subsequent risks and to attenuate those risks.

For the purposes of the preceding paragraph, investment services providers shall take into account the nature, scale, complexity and range of the investment services that they provide and the businesses that they engage in.

#### **Article 313-2**

I. - Investment services providers shall establish and maintain an effective compliance function that operates independently and has the following responsibilities :

1° To monitor and, on a regular basis, assess the adequacy and effectiveness of policies, procedures and measures implemented for the purposes of Article 313-1, and actions taken to remedy any deficiency in compliance of the investment services provider and the relevant persons with their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code.

2° To advise and assist the relevant persons responsible for investment services so that they comply with the professional obligations of investment services providers referred to in II of Article L. 621-15 of the Monetary and Financial Code.

II. - In this book, a relevant person is any person who is :

1° A manager, member of the board of directors, the supervisory board, or the executive board, managing director or deputy managing director, or any other company officer or tied agent of the investment services provider referred to in Article L. 545-1 of the Monetary and Financial Code.

2° A manager, member of the board of directors, the supervisory board, or the executive board, managing director or deputy managing director, or any other company officer of any tied agent of the investment services provider.

3° An employee of the investment services provider or of a tied agent of the investment services provider ;

4° A natural person seconded to and placed under the authority of the investment services provider or of a tied agent of the investment services provider ;

5° A natural person who takes part, under the terms of an outsourcing agreement, in providing services to the authorised provider or to its tied agent for the provision of investment services or who, under a delegation of authority to manage a collective investment scheme, takes part in the authorised provider's management of such scheme.

#### **Article 313-3**

Investment services providers shall ensure that the following conditions are met to enable the compliance function to perform its tasks properly and independently :

1° The compliance function must have the necessary authority, resources and expertise and access to all relevant information ;

2° A compliance officer must be appointed and must be responsible for this function and for reporting as to compliance, including the report referred to in Article 313-7.

3° The relevant persons involved in the compliance function are not involved in the performance of the services and activities that they monitor ;

4° The method for determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

However, investment services providers shall not be required to comply with Points 3° or 4° if they are able to demonstrate that, in view of the nature, scale, complexity and range of the investment services that they provide and the businesses that they engage in, the requirements under Points 3° or 4° are not proportionate and that their compliance function continues to be effective.

### **Paragraph 2 - Appointment and responsibilities of the compliance officer**

#### **Article 313-4**

The compliance officer referred to in Point 2° of Article 313-3 shall hold a professional license issued under the conditions defined in Sub-section 7 of this Section.

In portfolio management companies, the compliance officer shall hold a professional license as a compliance and internal control officer.

In other investment services providers, the compliance officer shall hold a professional license as an investment services compliance officer.



Senior management shall apprise the board of directors, the supervisory board or, failing that, the body responsible for supervision, if such a body exists, of the appointment of the compliance officer.

An AMF instruction shall specify the organisational procedures for the compliance function.

#### **SUB-SECTION 2 - RESPONSIBILITIES OF SENIOR MANAGEMENT AND SUPERVISORY BODIES**

##### **Article 313-5**

For the purposes of this sub-section, the supervisory body shall be the board of directors, the supervisory board or, failing that, the body responsible for supervision of senior management referred to in Articles L. 532-2, and L. 532-9 of the Monetary and Financial Code, if such a body exists,.

##### **Article 313-6**

The responsibility for ensuring that investment services providers comply with their professional obligations stipulated in II of Article L. 621-15 of the Monetary and Financial Code shall lie with senior management and, where appropriate, with the supervisory body.

More specifically, senior management and, where appropriate, the supervisory body, shall periodically assess and review the effectiveness of the policies, systems and procedures that the investment services provider has established to comply with its professional obligations and take the appropriate measures to remedy any deficiencies.

##### **Article 313-7**

Investment services providers shall ensure that senior management receives frequent compliance, risk control and periodic control reports at least once a year specifying if the appropriate measures have been taken in the event of deficiencies.

Investment services providers shall also ensure that its supervisory body, if such a body exists, receives periodic written reports on the same topics.

#### **SUB-SECTION 2A - VERIFICATION OF THE KNOWLEDGE OF SPECIFIED PERSONS**

##### **Article 313-7-1**

I. - The investment services provider shall ensure that natural persons acting under its authority or on its behalf have the appropriate qualifications and expertise as well as a sufficient level of knowledge.

II. - It verifies that the persons carrying out one of the following functions can prove they have the minimum level of knowledge set forth in Point 1° of II of Article 313-7-3 : <sup>1</sup>

- a) sales personnel, within the meaning of Article 313-7-2 ;
- b) asset manager, within the meaning of Article 313-7-2 ;
- c) head of financial instrument clearing, within the meaning of Article 313-7-2 ;
- d) head of post-trade services, within the meaning of Article 313-7-2 ;
- e) persons referred to in Article 313-29.

III. - The investment services provider shall not carry out the verification provided for in II with regard to persons employed as at 1 July 2010. Persons having passed one of the examinations referred to in Point 3° of II of Article 313-7-3 shall be deemed to have the minimum knowledge required to perform their duties.

IV. - To conduct the verification referred to in II, the investment services provider has six months from the date on which the employee starts to perform one of the above functions. The investment services provider shall ensure that any employee whose minimum knowledge has not yet been verified is appropriately supervised.

##### **Article 313-7-2**

1° A sales person is any natural person responsible for informing or advising the clients of the investment services provider under whose authority or on whose behalf he is acting, with a view to conducting transactions in financial instruments ;

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1. Order of 30 January 2009, article 2, Official Journal, 6 February 2009: « Paragraph II of Article 313-7-1 of the AMF General Regulation shall come into force on 1 January 2010 ».

2° An asset manager is any person authorised to take investment decisions in connection with an individual investment mandate or with the management of one or more collective investment schemes ;

3° A head of financial instrument clearing is a natural person representing the clearing member before the clearing house with respect to transaction registration, risk organisation and supervision, and the related financial instrument clearing functions ;

4° A head of post-trade services is a person who assumes direct responsibility for custody account keeping, settlement, depositary functions, securities management or securities services for issuers.

### **Article 313-7-3**

I. - The AMF has formed a Financial Skills Certification Board.

1° The Financial Skills Certification Board issues opinions at the request of the AMF concerning certification of the professional knowledge of natural persons acting under the authority or on behalf of an investment services provider and performing one of the functions referred to in II of Article 313-7-1 ;

2° When rendering opinions, the Financial Skills Certification Board considers the possibility of establishing equivalencies with similar schemes abroad.

II. - Further to an opinion of the Financial Skills Certification Board, the AMF :

1° Determines the content of the minimum knowledge to be acquired by natural persons acting under the authority or on behalf of an investment services provider and performing one of the functions referred to in II of Article 313-7-1. It shall publish that content ;

2° Sees to it that the minimum knowledge content is updated ;

3° Determines and verifies the arrangements for the examinations that validate acquisition of the minimum knowledge ;

4° Certifies examinations.

III. - The Financial Skills Certification Board has at least seven members :

1° One AMF representative ;

2° At least four members named by the AMF on the basis of their professional skills, after consulting with the main professional associations representing investment services providers ;

3° Two independent persons named by the AMF and skilled in the fields of education or vocational training in finance.

The Financial Skills Certification Board chooses one of its members as chairman.

The members of the Financial Skills Certification Board are appointed for a renewable three-year term. The AMF publishes the list of members.

IV. - The Financial Skills Certification Board shall draw up bylaws, approved by the AMF.

V. - Members of the Financial Skills Certification Board receive no remuneration.

### **SUB-SECTION 3 - COMPLAINT HANDLING**

#### **Article 313-8**

Investment services providers shall establish and maintain effective, effective and transparent procedures for reasonable and prompt handling of complaints received from retail clients or potential retail clients, and shall keep a record of each complaint and the measures taken to deal with it.

### **SUB-SECTION 4 - PERSONAL TRANSACTIONS**

#### **Article 313-9**

I. - For the purposes of this Book, "personal transaction" shall refer to a transaction carried out by or on behalf of a relevant person where at least one of the following criteria is met :

1° The relevant person is acting outside of the scope of his functions ;

2° The transaction is carried out on behalf of one of the following persons : the relevant person, any person with whom he has a family relationship or close links, a person whose relationship with the relevant person is such that

the relevant person has a material direct or indirect interest in the outcome of the trade, other than the payment of a fee or commission for the execution of the trade.

II. - A person with a family relationship with the relevant person means any of the following :

- 1° The spouse of the relevant person or the partner of the relevant person under the terms of a civil solidarity pact ;
- 2° Children over whom the relevant person holds parental authority or resident in his household, or who are his permanent wards ;
- 3° Any other relative of the relevant person resident in his household for at least one year on the date of the personal transaction concerned.

III. - A situation in which a person has close links with the relevant person shall mean a situation where natural or legal persons are linked :

- 1° By an equity holding, meaning a direct holding or a holding through a controlled entity of 20 % or more of the voting rights or the share capital of a company ;
- 2° Or by control, meaning the relationship between a parent company and a subsidiary, in any of the cases referred to in Article L. 233-3 of the Commercial Code or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation where two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

An AMF Instruction shall specify the application conditions for this Article.

#### **Article 313-10**

Investment services providers shall establish and maintain effective and adequate arrangements aimed at preventing the following activities in the case of any relevant person, or person acting on behalf of a relevant person, who is involved in activities that may give rise to a conflict of interest, or who has access to inside information referred to in Articles 621-1 to 621-3 or to other confidential information relating to clients or transactions with or for clients by virtue of the performance of his functions within the investment services provider :

1° Entering into a personal transaction that meets at least one of the following criteria :

- a) The transaction is prohibited by the provisions of Book VI ;
- b) The transaction involves the misuse or improper disclosure of inside or confidential information ;
- c) The transaction conflicts or is likely to conflict with the investment services provider's professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code.

2° Advising or procuring, other than in the proper course of the relevant person's function, any other person to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by Point 1° above, Article 313-27 or III of Article 314-66 ;

3° Without prejudice to Point 1° of Article 622-1, disclosing, other than in the proper course of his employment, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps :

- a) Entering into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by Article 313-27 or III of Article 314-66 ;
- b) Advising or procuring another person to enter into such a transaction.

#### **Article 313-11**

For the purposes of the provisions of Article 313-10, investment services providers must specifically ensure that :

1° All the relevant persons referred to in Article 313-10 are aware of the restrictions on personal transactions, and of the measures decided by the investment services provider in connection with personal transactions and disclosure for the purposes of Article 313-10 ;

2° The investment services provider is informed promptly of any personal transaction entered into by a relevant person referred to in the first paragraph of Article 313-10, either by notification of any such transaction or by other procedures enabling the investment services provider to identify such transactions ;

If the investment services provider has entered into an outsourcing contract, it must ensure that the service provider to which the task or function has been outsourced keeps a record of personal transactions entered into by any relevant person and is able to provide such information to the investment services provider promptly on request.

3° A record is kept of the personal transaction notified to the investment services provider or identified by it. The record shall also mention any authorisation or prohibition in connection with the transaction.

#### **Article 313-12**

Articles 313-10 and 313-11 shall not apply to the following types of personal transactions :

1° Personal transactions entered into under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or any other person on whose behalf the transaction is executed ;

2° Personal transactions in units in collective investment schemes, provided that the relevant person or any other person on whose behalf the transactions are executed are not involved in the management of the schemes.

The foregoing provision shall not apply to the schemes referred to in Articles L. 214-35-2, L. 214-37, L. 214-42 and R. 214-32 of the Monetary and Financial Code.

### **SUB-SECTION 5 - SAFEGUARDING OF CLIENT ASSETS**

#### **Article 313-13**

Investment services providers shall comply with the following obligations to safeguard their clients' rights in relation to the financial instruments belonging to them :

1° They must keep such records and accounts as are necessary to enable them at any time and without delay to distinguish assets held for one client from assets held for other clients, and from their own financial instruments.

2° They must maintain their records and accounts in a way that ensures their accuracy, and in particular, their correspondence to the financial instruments held by clients.

3° They must conduct periodic reconciliations between their internal accounts and records and those of the third parties with whom the clients' financial instruments are held.

4° They must take the necessary steps to ensure that any client financial instruments deposited with a third party can be identified separately from the financial instruments belonging to the investment services provider by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection ;

5° They must introduce adequate organisational arrangements to minimise the risk of loss or diminution of clients' assets or of rights in connection with those financial instruments resulting from misuse of the financial instruments, fraud, poor administration, incorrect record-keeping or negligence.

#### **Article 313-14**

Investment services providers using a third party to hold their clients' financial instruments shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements made by said party for the holding of those financial instruments.

Investment services providers shall take into account the expertise and market reputation of the third party, as well as any legal or regulatory requirements or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

#### **Article 313-15**

If investment services providers use a third party to hold their clients' financial instruments and that third party is located in another country that has specific regulations and supervision regarding the holding of financial instruments on behalf of another person, then those investment services providers shall choose a third party that is subject to the specific regulations and supervision and do so in accordance with the provisions of Article 313-14.

#### **Article 313-16**

Investment services providers may not use a third party to hold their clients' financial instruments if that third party is located in a State that is not party to the European Economic Area agreement that does not regulate the holding of financial instruments on behalf of another person, unless one of the following conditions is met :

1° The nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in the State that is not party to the European Economic Area agreement.

2° If the financial instruments are held on behalf of a professional client, that client makes a written request to the investment services provider to have them held with a third party in the State that is not party to the European Economic Area agreement.

#### **Article 313-17**

I. - Investment services providers may not enter into arrangements for securities financing in respect of financial instruments held by them on behalf of a client or otherwise use such financial instruments for their own account for the account of one of their other clients, unless the client has given his prior express consent for the use of the instruments on specified terms, as evidenced, in the case of a retail client, by his signature or an equivalent alternative mechanism.

The use of that client's financial instruments must be restricted to the specified terms to which the client has consented.

II. - Investment services providers may not enter into arrangements for securities financing transactions in respect of financial instruments held by them on behalf of a client in an omnibus account maintained by a third party, or otherwise use financial instruments held in such an account for their own account or for the account of another client unless at least one of the following conditions is met :

1° Each client whose financial instruments are held on an omnibus account must have given consent in accordance with I.

2° The investment services provider must have systems and controls to ensure that only financial instruments belonging to clients who have given prior consent in accordance with I are so used.

The investment services providers' records shall include data on the client on whose instructions the financial instruments have been used and on the number of financial instruments used belonging to each client who has given his consent, so as to enable the allocation of any loss of financial instruments.

#### **Article 313-17-1**

Each authorised provider shall see to it that its statutory auditor makes a report to the AMF at least annually on the adequacy of the measures taken by the authorised provider to comply with subparagraph 6 of Article L. 533-10 of the Monetary and Financial Code and with this sub-section.

### **SUB-SECTION 6 - CONFLICTS OF INTEREST**

#### **Paragraph 1 - Principles**

#### **Article 313-18**

Investment services providers shall take all reasonable measures to detect conflicts of interest that arise in the course of providing investment and ancillary services or management of collective investment schemes :

1° Either between itself, relevant persons, or any person directly or indirectly linked to the investment services provider by control, on the one hand, and its clients, on the other hand ;

2° Or between two clients.

#### **Article 313-19**

In order to detect conflicts of interest that could damage a client's interests for the purposes of Article 313-18, investment services providers shall at least take into account the possibility that the persons referred to in Article 313-18 might find themselves in one of the following situations, whether as a result of providing investment or ancillary services, collective investment scheme management or other activities :

1° The investment services provider or that person is likely to make a financial gain or avoid a financial loss, at the expense of the client ;

2° The investment services provider or that person has an interest in the outcome of a service provided to a client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome ;

3° The investment services provider or that person has a financial or other incentive to favour the interest of another client or group of clients over the interest of the client to whom the service is being provided ;

4° The investment services provider or that person carries on the same business as the client ;

5° The investment services provider or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client in any form whatsoever, other than the commissions or fees usually charged for such service.

## **Paragraph 2 - Conflicts of interest policy**

### **Article 313-20**

Investment services providers shall establish and maintain an effective conflicts of interest policy, set out in writing and appropriate to their size and organisation and to the nature, scale and complexity of their business.

Where an investment services provider is a member of a group, its conflicts of interest policy must also take into account any circumstances, of which it is or should be aware, that may give rise to a conflict of interest as a result of the structure and business activities of the other members of the group.

### **Article 313-21**

I. - The conflicts of interest policy established in compliance with Article 313-20 must specifically :

1° Identify, with reference to the investment services provider's investment services, ancillary services and other activities, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients when providing an investment service or an ancillary service or management of a collective investment scheme ;

2° Specify procedures to be followed and measures to be adopted in order to manage such conflicts.

II. - The procedures and measures provided for in Point 2° shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in Point 1° carry on those activities at a level of independence appropriate to the size and activities of the investment services provider and of the group to which it belongs, and to the materiality of the risk of damage to clients' interests.

The procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the investment services provider to ensure the requisite degree of independence :

1° Effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more clients ;

2° Separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the investment services provider ;

3° Elimination of any direct links between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, other relevant persons principally engaged in another activity, where a conflict of interest is likely to arise in relation to those activities ;

4° Measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out his activities ;

5° Measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest ;

6° Measures to ensure that a relevant person from a portfolio management company may only provide paid advisory services in that capacity and on behalf of the portfolio management company to companies issuing the securities held by the collective management schemes under the company's management or the securities that it plans to acquire, regardless of whether it is the company concerned or the collective investment scheme under management that pays for those services.

If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, investment services providers shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

### **Article 313-22**

Investment services providers shall keep and regularly update a log of the kinds of investment service or ancillary service and other activity carried out by it or on its behalf where a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of ongoing activities, is likely to arise.

### Paragraph 3 - Disclosure to clients

#### Article 313-23

Disclosure to clients, pursuant to 3 of Article L. 533-10 of the Monetary and Financial Code, shall be made in a durable medium

It shall include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision.

#### Article 313-24

When collective investment schemes or investment funds managed by the investment services provider or by an affiliated company are purchased or subscribed on behalf of a portfolio under management, the discretionary management contract, the full prospectus or the information memo of the collective investment scheme in question must provide for this possibility.

### Paragraph 4 - Provisions on investment research

#### Article 313-25

An investment recommendation given by an investment services provider, as defined in 1 of Article R. 621-30-1 of the Monetary and Financial Code, hereinafter referred to as a "general investment recommendation" shall constitute :

1° Either financial analysis or investment research that complies with Article L. 544-1 of the Monetary and Financial Code, hereinafter referred to as "investment research", which shall be subject to the provisions of Articles 313-26 and 313-27 ;

2° Or, in the other cases, a marketing communication, which shall be subject to the provisions of Article 313-28.

#### Article 313-26

I. - Investment services providers that produce or arrange for the production of investment research, as defined in Article 313-25, intended likely to be subsequently disseminated to their own clients or the public under their own responsibility or that of a member of their group shall ensure that the provisions of II of Article 313-21 are applied to investment analysts involved in the production of such analysis and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

II. - The provisions of I shall not apply to investment services providers that disseminate investment research produced by another person to the public or their clients, if the following criteria are met :

1° The person producing the investment research is not a member of the group to which the investment services provider belongs ;

2° The investment services provider does not substantially alter the recommendations within the investment research ;

3° The investment services provider does not present the investment research as having been produced by it ;

4° The investment services provider ensures that the producer of the investment research is subject to requirements equivalent to those provided for in I in relation to the production of the analysis, or that it has established a policy setting such requirements.

#### Article 313-27

The investment services providers referred to in I of Article 313-26 shall adopt measures to ensure that :

1° Investment analysts and other relevant persons do not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the investment services provider, in financial instruments to which investment research relates, or in any related financial instruments, if :

a) They are aware of the likely dissemination date or content of the investment research.

b) This knowledge is not accessible to the public and clients and cannot be readily inferred from the information that is available.

Investment analysts and other relevant persons refrain from trading until the recipients of the investment research have had a reasonable opportunity to act on the knowledge referred to in a).

2° In circumstances not covered by Point 1°, investment analysts and any other relevant persons involved in the production of investment research must not undertake personal transactions in financial instruments to which the analysis relates, or in any related financial instruments, contrary to the current recommendations made by these persons, except in exceptional circumstances and with the prior approval of the compliance officer.

3° Investment services providers, investment analysts, and other relevant persons involved in the production of investment research must not accept inducements from persons with a material interest in the subject-matter of the investment research.

4° Investment services providers, investment analysts, and other relevant persons involved in the production of investment research must not promise issuers favourable coverage in their analysis.

5° If a draft investment research report includes a recommendation or a target price, issuers, relevant persons other than investment analysts, and any other persons must not be permitted to review that draft of the investment research report prior to its dissemination for the purpose of verifying the accuracy of factual statements made in that analysis, or for any other purpose other than verifying compliance with the investment services provider's professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code.

For the purposes of this Article, "related financial instrument" means any financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument.

#### **Article 313-28**

A general investment recommendation of the type covered by Article 313-25 shall be subject to the statutory and regulatory provisions on marketing communications and to the following requirements :

1° It is clearly identified as such.

2° It contains a clear warning that it has not been prepared in accordance with regulatory provisions designed to promote the independence of investment research, and that the investment services provider is not subject to any prohibition on dealing in the relevant financial instrument ahead of the dissemination of the marketing communication.

In the case of an audio marketing communication, the recommendation should come with a similar warning.

### **SUB-SECTION 7 - PROFESSIONAL LICENCES**

#### **Paragraph 1 - General provisions**

#### **Article 313-29**

The following relevant persons must hold a professional license issued by the AMF or the investment services provider under the terms of Articles 313-38 and 313-45 :

1° Within investment services providers other than portfolio management companies :

- a) Traders of financial instruments ;
- b) Clearers of financial instruments ;
- c) Compliance officers for investment services ;
- d) Investment analysts ;

2° Within portfolio management companies : Compliance and internal control officers.

#### **Article 313-30**

Traders of financial instruments are natural persons empowered to commit the person under whose responsibility or on whose behalf they are acting in transactions in financial instruments for its own account or for a third party.

Clearers of financial instruments are natural persons empowered to commit a clearing-house member vis-à-vis the clearing house.

Compliance officers for investment services are the persons referred to in Article 313-4.

Compliance and internal control officers are the persons referred to in Article 313-70.

Investment analysts are natural persons assigned to the task of producing the general investment recommendations referred to in the second paragraph of Article 313-25.



**Article 313-31**

A natural person may perform one of the functions referred to in Article 313-29 on a trial basis or temporarily, without holding the required professional licence, for a maximum period of six months that can be renewed once.

Use of this exception by an investment services provider for traders, clearers and investment analysts shall require the prior consent of the compliance officer for investment services.

The function of compliance officer for investment services and the function of compliance and internal control officer may only be performed on a trial basis or temporarily with the prior consent of the AMF.

**Article 313-32**

Issuance of a professional license shall require the applicant to compile an request for authorisation, which shall be submitted to the investment services provider issuing the license or to the AMF.

The request for authorisation shall include the items stipulated in an AMF instruction.

**Article 313-33**

The request for authorisation shall be retained by the investment services provider that issues the licence or by the AMF for ten years after the licensee has ceased to perform the functions that gave rise to the issuance of the professional licence.

**Article 313-34**

Where a person provisionally ceases to perform the activity that required a professional licence, such interruption shall not result in withdrawal of the licence.

The person shall be deemed to have permanently ceased engaging in the activity that gave rise to the issuance of the license when the interruption lasts longer than one year, unless the AMF grants an exception.

**Article 313-35**

When a person definitively ceases to perform the function for which a professional licence was issued, the licence shall be withdrawn. The license shall be withdrawn by the investment services provider that issued it or by the AMF, as the case may be.

If a professional license has been issued by the AMF, the investment services provider on whose behalf the licenseholder is acting shall notify the AMF immediately upon the definitive cessation of activity referred to in the preceding paragraph.

**Article 313-36**

Whenever an investment services provider takes disciplinary measures against a person holding a professional licence because of a breach of the professional obligations, it shall so notify the AMF within one month.

**Article 313-37**

The AMF shall keep a register of professional licences.

For this purpose, the person issuing or revoking the professional license referred to in *a*, *b* and *d* of 1° of Article 313-29 shall notify the AMF of the identities of the persons whose licenses are issued or revoked within one month.

The AMF shall be notified of the appointments of the compliance officers referred to in *c* of 1° and in Point 2° of Article 313-29.

The information in the register of professional licences shall be retained for ten years after licences have been revoked.

**Paragraph 2 - Professional licences issued by the AMF****Article 313-38**

The AMF shall issue the professional licenses of the persons performing the functions of compliance and internal control officers and of compliance officers for investment services. For this purpose, the AMF shall organise a professional examination under the terms referred to in Articles 313-42 to 313-44.

However, where investment services providers appoint one of their senior managers to the function of compliance officer, that person shall hold the relevant professional license. He shall not be required to pass the examination provided for in the first paragraph.

#### **Article 313-39**

Before issuing the professional license, the AMF shall verify that the relevant natural person is fit and proper, that he is familiar with the professional requirements and capable of performing the functions of a compliance officer. In particular it shall verify that the person has passed an examination that it has certified pursuant to II of Article 313-7-3. The AMF shall also ensure that investment services providers comply with the provisions of Article 313-3.

#### **Article 313-40**

The AMF may waive the examination requirement for a person who has performed comparable functions with another investment services provider with equivalent business activities and organisational structures, provided that person has already passed the examination and the investment services provider planning to appoint him has already presented a candidate who passed the examination.

#### **Article 313-41**

If an investment services provider requires professional licenses for several compliance officers, the AMF shall ensure that the number of license holders is proportionate to the nature and the risks of the investment services provider's business activities, scale and organisational structure.

Investment services providers shall provide precise written definitions of the attributions of each professional license holder.

#### **Article 313-42**

The examination shall consist of interviews of professional license applicants by a jury. The applicants shall be presented by the investment services providers on whose behalf they are to perform their functions.

An AMF instruction shall specify the examination programme and procedures.

The AMF shall hold the examinations at least twice a year. It shall decide who sits on the jury, set the examination dates and determine the amount of examination fees. This information shall be made known to investment services providers.

The AMF shall collect the examination fees from the investment services providers presenting applicants.

#### **Article 313-43**

The members of the jury referred to in the first paragraph of Article 313-42 shall be :

- 1° An active compliance officer, chair ;
- 2° The head of an operational function with an investment services provider ;
- 3° A member of the AMF's staff.

If an applicant feels that a member of the jury has a conflict of interest with regard to him, he may ask the AMF to be examined by another jury.

#### **Article 313-44**

If it deems that the conditions referred to in Article 313-39 have been met, the jury shall propose that the AMF issue a professional license.

However, if the jury deems that the applicant has the necessary qualities to perform the function of compliance officer but that the investment services provider does not grant him proper independence or does not provide him with adequate resources, the jury may propose that the issuance of a professional license be subject to the condition that the investment services provider remedies the situation and notifies the AMF of the measures taken for this purpose.

If outsourcing of the function of compliance officer for investment services or the function of compliance and internal control officer is planned, the jury may be asked for its opinion.

### **Paragraph 3 - Professional licenses issued by investment services providers**

#### **Article 313-45**

Professional licences referred to in *a*, *b* and *d* of 1° of Article 313-29 shall be issued by the investment services providers under whose authority or on whose behalf the professional license holders are acting.

#### **Article 313-46**

Before any of the professional licences referred to in Article 313-45 are issued, the compliance officer for investment services shall ensure that the applicant is fit and proper, that it has met the procedural requirements established by the investment services provider to ascertain that applicants are cognisant of their professional obligations, and that it meets the conditions set forth in Article 313-7-1.

The compliance officer may obtain from AMF, upon request made by registered or hand-delivered letter with acknowledgment of receipt, a record of any disciplinary actions that the AMF has taken against the applicant during the previous five years.

#### **Article 313-47**

Investment services providers shall notify the AMF of the issuance of the professional licenses referred to in *a*, *b* and *d* of 1° of Article 313-29 within one month.

The AMF may ask the investment services provider to forward a copy of the license application.

Any person to whom a professional licence is issued shall be personally informed of that fact.

### **SUB-SECTION 8 - RECORD KEEPING**

#### **Article 313-48**

Investment services providers shall ensure that subscription and redemption orders relating to collective investment scheme shares or units are recorded in accordance with Articles 7 and 9 of Regulation (EC) 1287/2006 of 10 August 2006.

#### **Article 313-49**

Investment services providers shall retain the records referred to in Article L. 533-8 and in 5 of Article L. 533-10 of the Monetary and Financial Code for at least five years.

Agreements that set out the respective rights and obligations of the investment services provider and the client under an agreement to provide services, or the terms on which the investment services provider provides services to the client, shall be retained for at least the duration of the relationship with the client.

If the investment services provider's authorisation is revoked, the AMF may require said provider to retain all the relevant records for the five-year period stipulated in the first paragraph.

The AMF may, in exceptional circumstances, require investment services providers to retain any or all those records for longer periods, to the extent justified by the nature of the instrument or transaction, if that is necessary to enable it to exercise its supervisory functions.

#### **Article 313-50**

The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the AMF, and in such a form and manner that the following conditions are met :

1° The AMF must be able to access them readily and to reconstitute each key stage of the handling of each transaction ;

2° It must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained ;

3° It must not be possible for the records otherwise to be manipulated or altered.

#### **Article 313-51**

Investment services providers shall make arrangements under conditions that comply with laws and regulations for recording telephone conversations :

1° Of traders of financial instruments ;

2° Of relevant persons, other than traders, who are involved in business relationships with clients, whenever the compliance officer deems it necessary in view of the amounts involved and the risks incurred with regard to the orders.

However, the investment services provider may specifically empower traders who are likely to carry out a trade in a financial instrument outside of the usual business hours and away from the usual site of the department to which they report. It shall establish a procedure setting the conditions for such trades, so that they are executed with the required security.

#### **Article 313-52**

The purpose of recording telephone conversations shall be to facilitate monitoring to ensure that transactions are lawful and that they comply with clients' instructions

The compliance officer may listen to the recordings of telephone conversations made pursuant to Article 313-51. If the compliance officer does not himself listen to the recording, it may not be listened to without his agreement or the agreement of a person designated by him.

The persons referred to in Article 313-51, whose telephone conversations may be recorded, shall be notified of the conditions under which they are able to listen to the relevant recordings.

The retention period for telephone recordings required under this Regulation shall be at least six months. It must not be more than five years.

#### **Article 313-53**

Investment services providers shall retain information about the monitoring and assessments referred to in I of Article 313-2 in accordance with the requirements referred to in Article 313-50.

### **SUB-SECTION 9 - ANNUAL DATA SHEET**

#### **Article 313-53-1**

Within four months of the end of the financial year, portfolio management companies and investment services providers providing portfolio management services for third parties shall send the AMF the information specified on a data sheet described in an AMF instruction.

## **Section 2 - Additional organisational requirements for portfolio management companies**

### **SUB-SECTION 1 - GENERAL ORGANISATIONAL REQUIREMENTS**

#### **Article 313-54**

I. - Portfolio management companies must use adequate and appropriate resources, including material, financial and human resources at all times.

II. - They shall establish and maintain effective decision-making procedures and an organisational structure that clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities in accordance with the requirements specified by an AMF Instruction. In the context of the fund management activity of the portfolio management company, these decision-making procedures shall include the due diligence in connection with the selection, monitoring and management of the risks associated with the financial instruments in which the collective investment scheme invests.

III. - They shall ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities.

IV. - They shall establish and maintain effective and adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the portfolio management company.

More specifically, the monitoring and supervision procedures must enable the portfolio management company to ascertain whether its depositories have adequate procedures and resources to carry out transactions on its behalf.

V. - They shall employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

VI. - They shall establish and maintain effective and effective internal reporting and communication of information at all relevant levels.

VII. - They shall maintain adequate and orderly records of their business and internal organisation.

VIII. - They shall ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

IX. - For the purposes of I to VIII above, portfolio management companies shall take into account the nature, scale, complexity and range of the services that they provide and the businesses that they engage in.

#### **Article 313-55**

Portfolio management companies shall establish and maintain effective systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

#### **Article 313-56**

Portfolio management companies shall establish and maintain effective business continuity plans aimed to ensure, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and collective investment scheme management services, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their activities.

#### **Article 313-57**

Portfolio management companies shall establish and maintain effective accounting policies and procedures that enable them, at the request of the AMF, to deliver in a timely manner financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

#### **Article 313-58**

Portfolio management companies shall monitor and, on a regular basis, to evaluate the adequacy and effectiveness of their systems, internal control mechanisms and other arrangements established in accordance with Articles 313-54 to 313-57, and to take appropriate measures to address any deficiencies.

#### **Article 313-59**

The annual financial statements of the portfolio management company must be certified by a statutory auditor. Within six months of the end of the financial year, portfolio management companies shall file copies of their balance sheet, income statement and the notes to the financial statements, along with their annual management reports and notes, the statutory auditors' general and special reports with the AMF. If applicable, the companies shall also produce consolidated financial statements.

### **SUB-SECTION 2 - RISK MANAGEMENT**

#### **Article 313-60**

I. - Portfolio management companies shall that the following measures :

1° They shall establish and maintain effective risk management policies and procedures which identify the risks relating to their activities, processes and systems, and where appropriate, set the level of risk tolerated by the company ;

2° They shall adopt effective arrangements, processes and mechanisms to manage the risks relating to their activities, processes and systems, in light of their level of risk tolerance ;

3° They shall monitor :

a) The adequacy and effectiveness of their risk management policies and procedures ;

b) The level of their compliance and the compliance of their relevant persons with the arrangements processes and mechanisms adopted in accordance with 2° ;

c) The adequacy and effectiveness of measures taken to address any deficiencies in those systems and procedures, including failures by the relevant persons to comply with the requirements of such systems or procedures ;

II. - Portfolio management companies, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, to establish and maintain a risk management function that operates independently and carries out the following tasks :

1° Implementation of the policy and procedures referred to in I ;

2° Provision of advice and risk management reports to senior management in accordance with Article 313-7.

Where portfolio management company is not required to establish and maintain an effective risk management function that operates independently, it must nevertheless be able to demonstrate that the policies and procedures it has adopted in accordance with I satisfy the requirements of that paragraph and are appropriately effective.

#### **Article 313-61**

Portfolio management companies must be able at all times to measure the risks associated with positions taken in connection with the management of collective investment schemes' portfolios or clients' portfolios and to measure the contribution that such positions make to the general risk profile of the said portfolios. For the purposes of the provisions referred to in III of Article R. 214-12 of the Monetary and Financial Code, the portfolio management company shall calculate the liabilities of collective investment schemes at all times according to the procedures specified in an AMF instruction.

When no information is available about the prices or supplies of a financial instrument, the portfolio management company shall be able to make its own valuation of the instrument before acquiring or subscribing it.

### **SUB-SECTION 3 - INTERNAL AUDIT**

#### **Article 313-62**

Portfolio management companies, where appropriate and proportionate in view of the nature, scale, complexity and range of their business, shall establish and maintain an effective internal audit function which is separate and independent from their other functions and activities and which has the following responsibilities :

1° To establish and maintain an effective audit plan to examine and evaluate the adequacy and effectiveness of the portfolio management company's systems, internal control mechanisms and arrangements ;

2° To issue recommendations based on the result of work carried out in accordance with 1° ;

3° To verify compliance with those recommendations ;

4° To provide reports on internal audit issues in accordance with Article 313-7.

### **SUB-SECTION 4 - ORGANISATION OF COMPLIANCE AND INTERNAL CONTROL FUNCTIONS**

#### **Paragraph 1 - Compliance and internal control systems**

#### **Article 313-63**

For the purposes of the provisions of Sub-section 1 of Section 1 and Sub-sections 1, 2 and 3 of Section 2 of this Chapter, the compliance and internal control systems shall include a monitoring system as described in Article 313-64, internal audits as described in Article 313-62 and the advice and assistance functions referred to in Point 2° of I of Article 313-2.

#### **Article 313-64**

The monitoring system shall include the compliance monitoring system referred to in Point 1° of I of Article 313-2, the monitoring system referred to in Article 313-58 and the risk management system provided for in Article 313-60.

#### **Article 313-65**

First-level control shall be exercised by persons in operational functions.

Monitoring shall be conducted through second-level controls to ensure proper execution of first-level controls.

Monitoring shall be performed exclusively, subject to the provisions of Article 313-69, by staff appointed solely to that function.

#### **Paragraph 2 - Compliance and internal control officers**

#### **Article 313-66**

The compliance and internal control officers shall be responsible for the compliance function referred to in I of Article 313-2, the monitoring system referred to in Article 313-64 and the internal audits referred to in Article 313-62.

**Article 313-67**

If a portfolio management company establishes a separate and independent internal audit function for the purposes of Article 313-62, that function shall be performed by an internal audit manager who is not the same person as the compliance and continuing monitoring officer.

**Article 313-68**

Portfolio management companies may give the responsibility for monitoring, other than compliance monitoring, and the responsibility for compliance monitoring to two different people.

**Article 313-69**

When the manager carries out the function of compliance officer, he shall also be responsible for internal audit and monitoring, other than compliance monitoring.

**Article 313-70**

The following persons shall hold professional licenses :

1° The compliance and internal control officer referred to in Article 313-66 ;

2° The compliance and monitoring manager referred to in Article 313-67 ;

3° The manager for monitoring, other than compliance monitoring, referred to in Article 313-68 and the compliance officer referred to in the said Article, if the two functions are separate.

Employees of portfolio management companies or employees of another entity in their group or under the same central body may hold professional licenses if the portfolio management companies present them for the examination.

The AMF shall ensure that the number of professional license holders is proportionate to the nature and the risks of the portfolio management company's business activities, scale and organisational structure.

The internal audit manager referred to in Article 313-67 shall not hold a professional license.

**Article 313-71**

Portfolio management companies shall establish a procedure that enables all their employees and all natural persons acting on their behalf to discuss questions they have about deficiencies that they have noted in the actual implementation of compliance obligations with the compliance and internal control officer.

**SUB-SECTION 5 - OUTSOURCING****Article 313-72**

If portfolio management companies outsource the execution of critical operational tasks and functions or tasks and functions that are important for the provision of a service or the conduct of business, they shall take reasonable measures to prevent an undue exacerbation of operating risk.

Outsourcing of critical or important operational tasks or functions must not be done in such a way that it materially impairs the quality of internal control and prevents the AMF from verifying that the portfolio management company complies with all its obligations.

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

**Article 313-73**

Outsourcing shall consist of any agreement, in any form, between a portfolio management company and a service provider under which the service provider takes over a process, service or activity that otherwise would have been performed by the portfolio management company itself.

**Article 313-74**

I. An operational task or function shall be regarded as critical or important if a defect or failure in its performance would materially impair the portfolio management company's capacity for continuing compliance with the conditions and obligations of its authorisation or its professional obligations referred to in II of Article L. 621-15 of the Monetary

and Financial Code, or its financial performance, or the continuity of its business. More specifically, this Sub-section shall apply in the case of outsourced investment services.

II. - Without prejudice to the status of any other task or function, the following tasks or functions shall not be considered as critical or important :

1° The provision to the portfolio management company of advisory services, and other services which do not form part of the investment services of the firm, including the provision of legal advice, the training of personnel, billing services and the security of the portfolio management company's premises and personnel ;

2° The purchase of standard services, including market information services and the provision of price feeds.

#### **Article 313-75**

I. - Portfolio management companies that outsource an operational task or function shall remain fully responsible for complying with all their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code and complying, in particular, with the following conditions :

1° Outsourcing must not result in the delegation by senior management of its responsibility.

2° The relationship and obligations of the portfolio management company towards its clients must not be altered.

3° The conditions or commitments with which the company must comply in order to be authorised must not be undermined.

II. - Portfolio management companies shall exercise due skill, care and diligence when entering into, managing or terminating an outsourcing contract for critical or important operational tasks or functions.

In particular, portfolio management companies must take the necessary steps to ensure that the following conditions are satisfied :

1° The service provider must have the ability, capacity, and any authorisation required to perform the outsourced tasks or functions reliably and professionally.

2° The service provider must carry out the outsourced services effectively. To this end, the portfolio management company must establish methods for assessing the standard of performance of the service provider.

3° The service provider must properly supervise the carrying out of the outsourced tasks or functions, and adequately manage the risks stemming from outsourcing.

4° Portfolio management companies must take appropriate action if it appears that the service provider may not be carrying out the functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them.

5° Portfolio management companies must retain the necessary expertise to supervise the outsourced tasks or functions effectively and manage the risks stemming from outsourcing and must supervise those tasks and manage those risks.

6° The service provider must disclose to the portfolio management company any development that may have a material impact on its ability to carry out the outsourced tasks or functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them.

7° The procedures for terminating outsourcing contracts at the initiative of either party must ensure the continuity and the quality of the activities carried out.

8° The service provider must cooperate with the AMF in connection with the outsourced tasks or functions.

9° The portfolio management company, its auditors and the relevant competent authorities must have effective access to data related to the outsourced tasks or functions, as well as to the business premises of the service provider.

10° The service provider must protect any confidential information relating to the portfolio management company and its clients.

11° The portfolio management company and the service provider must establish and maintain an effective contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the nature of the outsourced task or function.

III. - The respective rights and obligations of portfolio management companies and service providers shall be clearly defined in a contract.

IV. - Where the portfolio management company and the service provider are members of the same group or are under the same central body, the portfolio management company may, for the purposes of determining how this



Article shall apply, take into account the extent to which it controls the service provider or has the ability to influence its actions.

V. - Portfolio management companies must provide the AMF, at its request, all information necessary to enable it to supervise the compliance of the performance of the outsourced tasks or functions with the requirements of this Book.

#### **Article 313-76**

I. - Where a portfolio management company outsources portfolio management provided to retail clients to a service provider located State that is not party to the European Economic Area, that company must ensure that the following conditions are satisfied :

1° The service provider must be authorised or registered in its home country to provide portfolio management service for third parties and it must be subject to prudential supervision.

2° There must be an appropriate cooperation agreement between the AMF and the competent authority of the service provider.

II. - In the case of portfolio management for a retail client, if one or both of those conditions referred to in I are not satisfied, the portfolio management company may outsource portfolio management services to a service provider located in a State that is not party to the European Economic Area only if it notifies the AMF about the outsourcing contract.

In the absence of any remarks by the AMF within three months of the notice being given, the planned outsourcing by the portfolio management company may be implemented.

### **SUB-SECTION 6 - DELEGATING MANAGEMENT OF COLLECTIVE INVESTMENT SCHEMES**

#### **Article 313-77**

When the portfolio management company delegates the management of a collective investment scheme, it shall be bound by the following conditions :

1° The portfolio management company may not delegate the entirety of its activities.

2° The delegation must not impede proper oversight by the AMF of the delegating company.

3° The portfolio management company has implemented measures enabling it to monitor the activity of the entity to which management is delegated, effectively and at all times.

4° The portfolio management company must be able to take action to ensure that the delegatee complies with applicable asset management regulations.

5° The delegation contract must be written and contain the clauses specified in an AMF Instruction. The delegating portfolio management company must be able to terminate the delegation contract at any time. If the delegation contract is terminated at the initiative of the delegatee, such termination must occur on terms and conditions that ensure the continuity of the delegated activity.

6° The delegating portfolio management company remains responsible for the delegated activities.

° The delegation must not lead to possible conflicts of interest.

8° When the delegatee is established in a State that is not party to the European Economic Area agreement, cooperation between the AMF and the supervisory authorities of that State must be assured.

#### **Article 313-78**

Financial management may be delegated only to a person authorised by a public authority to manage portfolios or collective investment schemes, or to a person that has received such delegation from a public authority.

Such person must comply with the conduct of business rules applicable to collective investment scheme management.

Delegation of the financial, administrative or accounting management of a collective investment scheme is subject to AMF approval. The programme of operations of the portfolio management company outlines the conditions under which the financial, administrative or accounting management of a scheme can be delegated, where such is the case.

The delegation agreement shall be made available for inspection by the AMF.

## CHAPTER IV - CONDUCT OF BUSINESS RULES

### Section 1 - General Provisions

#### Article 314-1

The provisions of this Chapter shall apply to investment services and ancillary services provided by investment services providers authorised in France, except, in the case of their branches established in other States that are parties to the European Economic Area agreement, for the services that they provide in those States.

Pursuant to Article L. 532-18-2 of the Monetary and Financial Code, these provisions shall also apply to investment services and ancillary services provided in France by the branches established in France of investment services providers authorised in other States that are parties to the European Economic Area agreement.

Investment services providers shall ensure that relevant persons are reminded that they are bound by the obligation of professional confidentiality, subject to the terms and penalties prescribed by law.

For the purposes of this Chapter, the term "client" shall designate existing and potential clients.

#### SUB-SECTION 1 - APPROVAL OF CODES OF CONDUCT

#### Article 314-2

Where a professional organisation draws up a code of conduct applicable to investment services or collective investment scheme management, the AMF shall verify whether the code's provisions are consistent with this General Regulation.

The professional organisation may ask the AMF to approve all or part of the code as professional standards.

If, having sought the opinion of the Association Française des Etablissements de Crédit et des Entreprises d'Investissement (AFECEI), the AMF considers that some or all the provisions of such code should be recommended to investment services providers, the AMF shall publish such recommendation in the official gazette (BALO) and post it on its website.

#### SUBSECTION 2 - PRIMACY OF THE CLIENT'S INTEREST AND MARKET INTEGRITY

#### Article 314-3

Investment services providers shall act honestly, fairly and professionally in the clients' best interests and in a manner which promotes the integrity of the market. More specifically, they shall comply with all the rules pertaining to the organisation and operation of the regulated markets and multilateral trading facilities that they use.

### Section 2 - Client and eligible counterparty categories

#### Article 314-4

I. - Investment services providers shall establish and implement appropriate written policies and procedures for classifying their clients into the categories of retail clients, professional clients and eligible counterparties.

II. - Investment services providers shall inform their clients of their categorisation as a retail client, a professional client or an eligible counterparty.

They shall also notify clients if they change categories.

They shall notify their clients using a durable medium of their right to ask for a different categorisation and the consequences that such a change would have on their level of protection.

III. - It is the responsibility of professional clients or eligible counterparties to inform investment services providers of any changes that are likely to result in a change in their categorisation.

IV. - Investment services providers who find that a professional client or an eligible counterparty no longer meets the requirements for their category shall take the appropriate measures.

V. - It is the responsibility of a professional client or an eligible counterparty to ask to be treated as belonging to a category providing higher protection if they feel that they are not able to assess and manage risks that they incur properly.

**Article 314-4-1**

When dealing with new clients, investment services providers shall gather information about the identity and legal capacity of each new client in accordance with an AMF instruction.

**SUB-SECTION 1 - RETAIL CLIENT TREATMENT OPTION****Article 314-5**

Professional clients may ask investment services providers to treat them as retail clients in all their dealings or for specific financial instruments, investment services or transactions.

If the provider agrees to such a request, an agreement shall be drawn up on paper or in another durable medium that sets out the financial instruments, investment services and transactions concerned.

**SUB-SECTION 2 - PROFESSIONAL CLIENT TREATMENT OPTION****Article 314-6**

Retail clients may waive some of the protection provided by the conduct of business rules referred to in this Chapter.

In this case, investment services providers may treat retail clients as professional clients, subject to compliance with the criteria and procedure mentioned below. However, retail clients must not be presumed to have market knowledge and experience that are comparable to those of the clients referred to in Sub-section 1 of this Section.

The lower level of protection provided by the conduct of business rules shall not be deemed valid unless the investment services provider conducts an adequate assessment of the client's skill, experience and knowledge to obtain reasonable assurance that, with regard to the transactions and services considered, the client is able to make investment decisions and understand the risks incurred.

The aptitude criteria applied to the directors and senior managers of authorised undertakings on the basis of financial Directives may be considered as one way of assessing a client's skill and knowledge. In the case of a small undertaking that does not meet the criteria in 2 of I of Article D. 533-11 of the Monetary and Financial Code, the assessment should be made of the person authorised to carry out transactions in the name of the undertaking.

The assessment must find that at least two of the following criteria are satisfied :

- 1° The person must hold a portfolio of financial instruments worth more than EUR 500,000.
- 2° The person must have carried out an average of at least ten major trades in financial instruments per quarter over the previous four quarters.
- 3° The person must have held a professional position in the financial sector for at least one year that required knowledge of investments in financial instruments.

An AMF Instruction shall specify the terms and conditions for the application of this Article.

**Article 314-7**

The clients referred to in Article 314-6 may not waive the protection afforded by the conduct of business rules unless they follow the procedure set out below :

- 1° The client shall notify the investment services provider in writing of his wish to be treated as a professional client at all times, or for a specific investment service or transaction, or else for a specific type of transaction or product.
- 2° The investment services provider shall provide a clear written explanation of the protections and compensation rights that the client may be waiving.
- 3° The client shall make a written declaration that is separate from the contract that he is aware of the consequences of waiving the abovementioned protections.

Before deciding to accept the waiver, the investment services provider shall be required to take all reasonable measures to ascertain that the client wishing to be treated as a professional client meets the criteria set out in Article 314-6.

**SUB-SECTION 3 - ELIGIBLE COUNTERPARTIES****Article 314-8**

Eligible counterparties referred to in Article L. 533-20 of the Monetary and Financial Code may ask investment services providers to treat them as professional clients or retail clients in all their dealings or for specific financial instruments, investment services or transactions.

If the provider accepts this request, it shall treat the eligible counterparty as a professional client or a retail client, as the case may be.

**Article 314-9**

If one of the entities referred to in Article 314-8 asks to be treated as a client, without specifically asking to be treated as a retail client, and if the investment services provider accepts that request, the provider shall treat the said entity as a professional client.

However, if the said entity specifically asks to be treated as a retail client, and if the investment services provider accepts that request, the provider shall treat the said entity as a retail client.

**Section 3 - Information to customers****SUB-SECTION 1 - CHARACTERISTICS****Paragraph 1 - Clear information that is not misleading****Article 314-10**

Investment services providers shall ensure that all information that they address to clients, including marketing information, satisfies the conditions laid down in I of Article L. 533-12 of the Monetary and Financial Code.

Investment services providers shall ensure that all information, including marketing information, that they address to retail clients or that is likely to be received by retail clients, satisfies the conditions laid down in Articles 314-11 to 314-17.

**Article 314-11**

The information shall include the name of the investment services provider.

It shall be accurate and in particular shall not emphasise any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks.

It shall be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received.

It shall not disguise, diminish or obscure important items, statements or warnings.

**Article 314-12**

Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, the following conditions shall be satisfied :

1° The comparison must be meaningful and presented in a fair and balanced way.

2° The sources of the information used for the comparison must be specified.

3° The key facts and assumptions used to make the comparison must be included.

**Article 314-13**

Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, the following conditions shall be satisfied :

1° That indication must not be the most prominent feature of the communication.

2° The information must include appropriate performance information which covers the immediately preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided if less than five years, or such longer period as the

investment services provider may decide. In every case that performance information must be based on complete 12-month periods.

3° The reference period and the source of information must be clearly stated.

4° The information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results.

5° Where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client is resident, the currency must be clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations.

6° Where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed.

#### **Article 314-14**

Where the information includes or refers to simulated past performance, it must relate to a financial instrument or a financial index, and the following conditions shall be satisfied :

1° The simulated past performance must be based on the actual past performance of one or more financial instruments or financial indices which are the same as, or underlie, the financial instrument concerned.

2° In respect of the actual past performance referred to in Point 1° of this Article, the conditions set out in Points 1°, 2°, 3°, 5° and 6° of Article 314-13 must be complied with.

3° The information must contain a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

#### **Article 314-15**

Where the information contains information on future performance, the following conditions shall be satisfied :

1° The information must not be based on or refer to simulated past performance.

2° It must be based on reasonable assumptions supported by objective data.

3° Where the information is based on gross performance, the effect of commissions, fees or other charges must be disclosed.

4° The information must contain a prominent warning that such forecasts are not a reliable indicator of future performance.

#### **Article 314-16**

Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

#### **Article 314-17**

The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment services provider.

### **Paragraph 2 - Content and timing of the information**

#### **Article 314-18**

Appropriate information presented in an understandable form shall be addressed to clients concerning :

1° The investment services provider and its services ;

2° The proposed financial instruments and investment strategies, which must include appropriate guidelines and warnings about the inherent risks of investing in such instruments or of certain investment strategies ;

3° Execution systems, if appropriate.

4° Costs and associated charges.

The purpose of providing this information is to enable clients to understand the nature of the proposed investment service and the specific type of financial instrument, along with the associated risks, and, consequently, to make informed investment decisions. This information may be provided in a standardised format.

**Article 314-19**

Information that is specific to a UCITS complying with Directive 85/611/EEC of 20 December 1985 and is included in the simplified prospectus shall be deemed to fulfil the provisions of Articles 314-33, 314-34, 314-37 and 314-42.

The benefit of the provisions of the preceding paragraph shall also extend to information that is specific to a collective investment scheme authorised by the AMF, except for the information stipulated in Articles L. 214-36, L. 214-39, L. 214-41, L. 214-41-1 and L. 214-42 of the Monetary and Financial Code, which shall be given in the simplified prospectus, and provided that the information meets the requirements set out in Directive 85/611/EEC of 20 December 1985.

**Article 314-20**

Investment services providers shall provide the following information to retail clients in good time, either before they are bound by a contract for the provision of investment services or ancillary services or before the provision of such services if that provision of services is not covered by a contract or is made prior to signing a contract :

- 1° The terms and conditions of the contract for the provision of investment services or ancillary services ;
- 2° The information required in Article 314-32.

**Article 314-21**

The information referred to in Articles 314-34, 314-40, 314-41 and 314-42 shall be provided to retail clients in good time and before the provision of the relevant service.

**Article 314-22**

The information referred to in 4° and 5° of Article 314-39 shall be provided to professional clients in good time and before the provision of the relevant service.

**Article 314-23**

For retail clients, the information required in Article 314-20 may be provided immediately after the signature of any contract for the provision of investment services or ancillary services, and the information referred to in Article 314-21 may be provided immediately after the investment services provider starts providing the services, subject to the following conditions :

- 1° The investment services provider was not able to comply with the time limits referred to in Articles 314-20 and 314-21 because the contract was signed at the client's request by a means of communication that did not enable the provider to provide the information in accordance with those Articles.
- 2° the investment services provider has applied the provisions of Article R. 121-2-1 (5°) of the Consumption Code or any equivalent provision in another State party to the European Economic Area agreement.

**Article 314-24**

Investment services providers shall notify clients in good time of any material change in the information to be provided under Sub-sections 3 and 4 that affects the service provided to those clients. The notification must be given in a durable medium if the relevant information is to be provided in such a medium.

**Article 314-25**

The information referred to in Articles 314-20, 314-21, 314-22 and 314-23 shall be provided in a durable medium under the conditions laid down in Article 314-26 or posted to a website under the conditions laid down in Article 314-27.

**Paragraph 3 - Information media****Article 314-26**

A durable medium is any instrument which enables a client to store information addressed personally to that client in a way that affords easy access for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

The durable medium may take another form than paper only if :

- 1° The provision of that information in that medium is appropriate to the context in which the business between the investment services provider and the client is, or is to be, carried on.

2° The person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

#### **Article 314-27**

Where, pursuant to Articles 314-20 to 314-25, 314-29, 314-31 to 314-42 and 314-72, an investment services provider provides information to a client by means of a website and that information is not addressed personally to the client, the following conditions shall be satisfied :

1° The provision of that information in that medium is appropriate to the context in which the business between the investment services provider and the client is, or is to be, carried on.

2° The client must specifically consent to the provision of that information in that form.

3° The client must be notified electronically of the address of the website, and the place on the website where the information may be accessed.

4° The information must be up to date.

5° The information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

#### **Article 314-28**

The provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the investment services provider and the client is, or is to be, carried on, if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

### **SUB-SECTION 2 - MARKETING COMMUNICATIONS**

#### **Article 314-29**

The information contained in a marketing communication shall be consistent with any information the investment services provider provides to its clients in the course of carrying on investment and ancillary services.

#### **Article 314-30**

The AMF may require investment services providers to submit to it their marketing communications for the investment services that they provide and the financial instruments that they offer prior to publication, distribution or broadcast.

It may require changes to the presentation or the content to ensure that the information is accurate, clear and not misleading.

#### **Article 314-31**

Where a marketing communication contains an offer or invitation of the following nature and specifies the manner of response or includes a form by which any response may be made, it shall include such of the information referred to in Sub-sections 3 and 4 as appears relevant to that offer or invitation :

1° An offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the marketing communication ;

2° An invitation to any person who responds to the marketing communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service.

However, the first paragraph shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential retail client must refer to another document or documents, which, alone or in combination, contain that information.

### **SUB-SECTION 3 - INFORMATION ABOUT PROVIDERS, SERVICES AND FINANCIAL INSTRUMENTS**

#### **Paragraph 1 - Common provisions**

#### **Article 314-32**

Investment services providers shall provide retail clients with the following general information, where relevant :

- 1° The name and address of the investment services provider, and the contact details necessary to enable clients to communicate effectively with the provider ;
- 2° The languages in which the client may communicate with the investment services provider, and receive documents and other information from it ;
- 3° The methods of communication to be used between the investment services provider and the client including, where relevant, those for the sending and reception of orders ;
- 4° A statement of the fact that the investment services provider is authorised and the name and contact address of the competent authority that has authorised it ;
- 5° Where the investment services provider is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered ;
- 6° The nature, frequency and timing of the reports on the performance of the service to be provided by the investment services provider to the client ;
- 7° If the investment services provider holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the provider by virtue of its activities ;
- 8° A general description, which may be provided in summary form, of the conflicts of interest policy maintained by the investment services provider in accordance with Articles 313-20 and 313-21 ;
- 9° At any time that the client requests it, further details of that conflicts of interest policy in a durable medium or by means of a website under the conditions laid down in Article 314-27.

**Article 314-33**

Investment services providers shall provide clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client or a professional client.

That description must explain the nature of the specific type of instrument concerned, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

**Article 314-34**

The description of risks shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements :

- 1° The risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment ;
- 2° The volatility of the price of such instruments and any limitations on the available market for such instruments ;
- 3° The fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments ;
- 4° Any margin requirements or similar obligations, applicable to instruments of that type.

**Article 314-35**

If an investment services provider provides a retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with Directive 2003/71/EC, the investment services provider shall inform the client how that prospectus is being made available to the public.

**Article 314-36**

Where the risks associated with a financial instrument composed of two or more different financial instruments or services are likely to be greater than the risks associated with any of the components, the investment services provider shall provide an adequate description of the components of that instrument and the way in which its interaction increases the risks.

**Article 314-37**

In the case of financial instruments that incorporate a guarantee by a third party, the information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the retail client to make a fair assessment of the guarantee.



**Article 314-38**

Investment services providers shall inform their customers about the nature of the guarantees offered by the clearinghouse.

**Paragraph 2 - Specific provisions for financial instruments held on behalf of clients****Article 314-39**

Investment services providers holding financial instruments shall provide their clients with such of the following information as is relevant :

1° The investment services provider shall inform the retail client of the fact that the financial instruments or funds of that client may be held by a third party on behalf of the investment services provider and of the responsibility of the investment services provider for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.

2° Where financial instruments of the retail client may, if permitted by applicable law, be held in an omnibus account by a third party, the investment services provider shall inform the client of this fact and shall provide a prominent warning of the resulting risks.

3° Where it is not possible under applicable law for a retail client's financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the investment services provider, the latter shall provide a prominent warning of the resulting risks.

4° The investment services provider shall inform the client in cases where accounts that contain financial instruments or funds belonging to that client are or will be subject to the law of a jurisdiction other than that of a State party to the European Economic Area agreement and shall indicate how the rights of the client relating to those financial instruments or funds may differ accordingly.

5° The investment services provider shall inform the client about the existence and the terms of any security interest or lien which the provider has or may have over the client's financial instruments or funds, or any right of set-off it holds in relation to those instruments.

Where applicable, it shall also inform the client of the fact that a depository may have a security interest or right of set-off in relation to those instruments.

6° An investment services provider, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a retail client, or before otherwise using such financial instruments for its own account or the account of another client, shall in good time before the use of those instruments provide the retail client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment services provider with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

**Paragraph 3 - Specific provisions for portfolio management services****Article 314-40**

Investment services providers providing the service of portfolio management shall establish an appropriate method of evaluation and comparison so as to enable the client for whom the service is provided to assess the investment services provider's performance.

This method may consist of a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio.

**Article 314-41**

Investment services providers shall provide retail clients with such of the following information as is applicable, in addition to the information required under Article 314-32 :

1° Information on the method and frequency of valuation of the financial instruments in the client portfolio ;

2° Details of any outsourcing of the discretionary management of all or part of the financial instruments or funds in the client portfolio ;

3° A specification of any benchmark against which the performance of the client portfolio will be compared ;

4° The types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits ;

5° The management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

#### **SUB-SECTION 4 - COST INFORMATION**

##### **Article 314-42**

Investment services providers shall provide retail clients with information on costs and associated charges that includes such of the following elements as are relevant :

1° The total price to be paid by the client in connection with the financial instrument or the investment service or ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the investment services provider or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it ;

The commissions charged by the investment services provider shall be itemised separately in every case ;

2° Where any part of the total price referred to in Point 1° is to be paid in or represents an amount of a currency other than the euro, an indication of the currency involved and the applicable currency conversion rates and costs ;

3° Notice of the possibility that other costs, including taxes, related to transactions in connection with the financial instrument or the investment service may arise for the client that are not paid via the investment services provider or imposed by it ;

4° The arrangements for payment or any other formalities.

#### **Section 4 - Assessment of the suitability and appropriateness of the service to be provided**

##### **SUB-SECTION 1 - ASSESSMENT OF THE SUITABILITY OF PORTFOLIO MANAGEMENT SERVICES AND INVESTMENT ADVICE**

##### **Article 314-43**

For the purposes of 5 of Article D. 321-1 of the Monetary and Financial Code, a recommendation shall be personalised if it is addressed to a person in his capacity as an investor or a potential investor, or in his capacity as a representative of an investor or a potential investor.

The recommendation must be presented as adapted for that person or based on an examination of the specific circumstances of that person, and must recommend a transaction covered by one of the following categories :

1° Purchasing, selling, subscribing, exchanging, redeeming, holding or underwriting a particular financial instrument ;

2° Exercising or not exercising a right attaching to a particular financial instrument to buy, sell, subscribe, exchange or redeem a financial instrument.

A recommendation shall not be deemed to be personalised if it is exclusively disseminated through distribution channels or addressed to the public.

##### **Article 314-44**

For the purposes of I of Article L. 533-13 of the Monetary and Financial Code, investment services providers shall obtain from clients such information as is necessary for them to understand the essential facts about the client and, to consider, taking into account the nature and extent of the service provided, that the specific transaction that they intend to recommend, or the portfolio management service that they intend to provide, satisfies the following criteria :

1° The service meets the client's investment objectives.

2° The client is financially able to bear any risks related to the recommended transaction or to the portfolio management service provided and consistent with his investment objectives.

3° The client has the necessary experience and knowledge to understand the risks involved in the recommended transaction or in the portfolio management service provided.

##### **Article 314-45**

Where an investment services provider provides investment advice service to a professional client, it shall be entitled to assume that the client is able financially to bear any related investment risks corresponding to the investment objectives of that client.

**Article 314-46**

The information regarding the financial situation of the client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

**Article 314-47**

The information regarding the investment objectives of the client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

**SUB-SECTION 2 - ASSESSMENT OF THE APPROPRIATENESS OF OTHER INVESTMENT SERVICES****Article 314-48****Article 314-49**

In order to make the assessment referred to in II of Article L. 533-13 of the Monetary and Financial Code, investment services providers shall determine whether that client has the necessary experience and knowledge to understand the risks involved in relation to the financial instrument or investment service offered or demanded.

**Article 314-50**

The warning referred to in II of Article L. 533-13 of the Monetary and Financial Code may be given in a standardised format.

**Section 3 - Provisions common to suitability and appropriateness assessments****Article 314-51**

The information referred to in Sub-sections 1 and 2 of this Section regarding a client's knowledge and experience in the investment field shall include the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of financial instrument or transaction envisaged, including their complexity and the risks involved in the said service :

- 1° The types of service, transaction and financial instrument with which the client is familiar ;
- 2° The nature, quantity, and frequency of the client's transactions in financial instruments and the period over which they have been carried out ;
- 3° The client's level of education, and profession or relevant professional experience.

**Article 314-52**

An investment services provider shall not encourage a client or potential client not to provide information referred to in Sub-sections 1 and 2 of this Section.

**Article 314-53**

An investment services provider shall be entitled to rely on the information provided by its clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

**Article 314-54**

Where an investment services provider provides an investment service to a professional client, it shall be entitled to assume that the professional client has the necessary experience and knowledge to understand the risks involved in those particular instruments, transactions and services for which the client is classified as a professional client.

**SUB-SECTION 4 - SPECIFIC PROVISIONS FOR EXECUTION-ONLY SERVICE****Article 314-55**

The provisions of Sub-sections 1, 2 and 3 of this Section shall not apply to the execution-only service referred to in III of Article L. 533-13 of the Monetary and Financial Code.

For the purposes of 3° of III of Article L. 533-13 of the Monetary and Financial Code, investment services providers shall clearly inform the client that, in the provision of execution-only service, they are not required to assess whether

the financial instrument or service is suitable for the client, and, consequently, the client shall not benefit from the corresponding protection under the conduct of business rules.

This warning may be provided in a standardised format.

#### **Article 314-56**

For the purposes of 2° of III of Article L. 533-13 of the Monetary and Financial Code, a service may be deemed to have been provided at the client's initiative if the client requests it following any communication containing a promotion or offer of financial instruments made by any means and which is nature a general communication addressed to the public or a broader group or category of clients.

A service may not be deemed to have been provided at the client's initiative if the client requests it following a personalised communication addressed to him by the investment services provider or in its name that invites the client, or attempts to invite the client, to take an interest in a given financial instrument or transaction.

#### **Article 314-57**

I. - For the purposes of 1° of III of Article L. 533-13 of the Monetary and Financial Code, the following financial instruments shall be considered as non-complex financial instruments :

1° Shares admitted to trading on a regulated market in a State party to the European Economic Area agreement or an equivalent market in a third country ;

2° Money market instruments ;

3° Bonds and other debt securities, except for bonds and other debt securities that include a derivative ;

4° Units or shares of UCITS complying with Directive 85/611/EEC of 20 December 1985.

II. - For the purposes of 1° of III of Article L. 533-13 of the Monetary and Financial Code, a financial instrument shall also be considered as non-complex if it meets the following criteria :

1° It is not :

a) A financial instrument referred to in Article L. 211-1 of the Monetary and Financial Code provided that it carries the right to buy or sell another financial instrument, or gives rise to a cash payment, determined by reference to financial instruments, a currency, an interest rate or rate of return, commodities or other indices or measurements ;

b) A financial future, as defined in 4 of I of Article L. 211-1 of the Monetary and Financial Code.

2° There are frequent opportunities to dispose of, redeem, or realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer.

3° It does not involve any actual or potential liability for the client that exceeds its acquisition cost.

4° Adequate information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

### **Section 5 - Client agreements**

#### **Article 314-58**

I. - Where an investment services provider signed an agreement with its client before 1 November 2007, it shall notify the client before that date of the amendments stemming from compliance with the requirements introduced by this Book.

The absence of any protest from the client within two months of that notice shall mean that the client accepts the amendments.

II. - The provisions of Sub-sections 1, 2 and 3 of this Section shall apply to agreements signed by investment services providers with retail customers.

#### **SUB-SECTION 1 - PROVISIONS COMMON TO ALL INVESTMENT SERVICES OTHER THAN INVESTMENT ADVICE**

#### **Article 314-59**

Any provision of investment services other than investment advice to a retail client shall be covered by a written agreement, in paper or another durable medium.

The agreement shall contain the following indications :

1° The identity of the person(s) with whom the agreement is being made :

a) In the case of a legal person, how the investment services provider is to ascertain the name of the person(s) empowered to act in the name of said legal person and, where appropriate, their status as qualified investor(s) within the meaning of Articles D. 411-1, D. 411-2, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the Monetary and Financial Code ;

b) In the case of a natural person, his status, as appropriate, as a French resident, a resident of a State party to the European Economic Area agreement or a resident of a third country, in addition, as appropriate, the identity of the person(s) empowered to act in the name of the said natural person ;

2° The nature of the services provided, along with the categories of financial instruments for which the services are provided ;

3° The charges for the services provided by the investment services provider and the procedure for remunerating it ;

4° The term of the agreement ;

5° The confidentiality obligations incumbent upon the investment services provider under the applicable laws and regulations relating to professional secrecy.

## **SUB-SECTION 2 - PROVISIONS ON PORTFOLIO MANAGEMENT SERVICE**

### **Article 314-60**

The discretionary management contract must specify at the minimum :

1° The management objectives ;

2° The categories of financial instruments that can be included in the portfolio. Unless contract clauses state otherwise, the authorised instruments shall be :

a) Financial instruments traded on a regulated market or on a regularly operating regulated market of a State that is not a member of the European Community nor a party to the European Economic Area agreement, provided that said market is not on the list of banned markets kept by the AMF ;

b) European UCITS that comply with Directive 85/611/EC of 20 December 1985 and collective investment schemes operating under French law that are open to all subscribers ;

c) Derivatives traded on a market that is included in the list drawn up by ministerial order ;

3° Procedures for reporting to clients on the management of their portfolios ;

4° The term, renewal procedures and termination procedures for the agreement ;

5° Where appropriate, if the client is not a qualified investor, the possibility of being involved in operations or subscribing and acquiring financial instruments that are reserved for qualified investors.

When the terms of the contract allow transactions in financial instruments other than those referred to in Point 2° or leveraged instruments, particularly transactions in derivatives, the client must give special and explicit consent, with a clear indication of the instruments authorised, the procedures for these transactions and for reporting to the client.

6° As appropriate, an indication that sliding-scale remuneration shall be paid from the first euro of performance, if the management commission includes a variable component linked to the portfolio's outperforming the management objective.

An AMF Instruction shall specify the terms and conditions for the application of these provisions.

### **Article 314-61**

The contract may be terminated at any time by the client or the portfolio management company. Termination shall be made effective by a registered letter with acknowledgement of receipt.

Termination initiated by the client shall take effect upon receipt of the registered letter by the portfolio management company, which is then no longer authorised to initiate new transactions.

Termination by the portfolio management company shall take effect five trading days after the client receives the registered letter.

Not later than the effective date of termination, the portfolio management company shall draw up an account statement and a management report indicating the management results since the last portfolio statement. It shall provide the client with all necessary clarifications on the nature of open positions.

**SUB-SECTION 3 - PROVISIONS APPLICABLE TO SERVICES OTHER THAN PORTFOLIO MANAGEMENT AND INVESTMENT ADVICE****Paragraph 1 - Provisions applying specifically to order reception and transmission service****Article 314-62**

Where the agreement concerns the reception and transmission of orders for third parties, it shall specify :

- 1° The characteristics of orders that may be passed to the investment services provider. These characteristics take into account, as appropriate, the rules of the market where the orders are to be executed.
- 2° How the orders are to be transmitted ;
- 3° The procedures for informing the client in cases where the order has not been successfully transmitted ;
- 4° The name of the institution responsible for keeping the client's account, if the account keeper is not the provider handling the order reception and transmission service.

Where the investment services provider acts as a broker or agent, the agreement shall also specify reporting content and procedures for informing the client after the order has been executed, as provided for in Article 314-64. The time period stipulated in the agreement for supplying this information on order execution may not exceed twenty-four hours from the time that the provider responsible for transmitting the order has been notified of the terms on which it was executed.

- 5° Reporting content and procedures for informing the client about the performance of the service in accordance with Articles 314-86 to 314-89.

**Article 314-63**

Where investment services providers provide order reception and transmission service over the Internet, the service agreement shall :

- 1° Specify explicitly the special evidence procedures for reception of orders over the Internet ;
- 2° Describe the alternative facilities available to clients in the event of a prolonged interruption of service ;
- 3° Specify that the provider shall be responsible for the proper execution of the order, once the confirmation of the order has been sent to the client and as soon as the client confirms his consent.

**Paragraph 2 - Specific provisions for order execution service****Article 314-64**

Where the agreement concerns the execution of orders for third parties, it shall specify :

- 1° The characteristics of orders that may be passed to the investment services provider in view of the order execution policy referred to in Article 314-72 and the rules of the markets where the orders are to be executed ;
- 2° How the orders are to be transmitted ;
- 3° Reporting content and procedures for informing the client about the performance of the service in accordance with Articles 314-86 to 314-89 ;
- 4° The time period for the client to challenge the terms of execution of which he has been informed ;
- 5° The name of the institution responsible for keeping the client's account, if the account keeper is not the provider handling the order execution service.

**Section 6 - Handling and executing orders****SUB-SECTION 1 - GENERAL PROVISIONS****Paragraph 1 - Principles****Article 314-65**

I. - If a client passes a limit order for shares admitted to trading on a regulated market that is not executed immediately under the prevailing market conditions, the investment services provider shall, unless explicitly

instructed otherwise by the client, take measures to facilitate execution of the order as soon as possible by making the order public immediately in a way that is easily accessible to other market participants under the conditions stipulated in Article 31 of Regulation (EC) 1287/2006 of 10 August 2006.

II. - The investment services provider shall be deemed to satisfy the provisions of I if it transmits the order to a regulated market or a multilateral trading facility.

III. - The provisions of I shall not apply to limit orders that are large in scale compared with normal market size, as defined in Article 20 of Regulation (EC) 1287/2006 of 10 August 2006.

#### **Article 314-66**

I. - Investment services providers shall comply with the following requirements for the execution of client orders :

1° They shall ensure that client orders are registered and routed rapidly and accurately ;

2° They shall transmit or execute client orders rapidly in their order of arrival, unless the nature of the order or prevailing market conditions do not make this possible, or the interests of the client call for a different action ;

3° They shall inform retail clients of any major problems that could affect the proper transmission and execution of orders as soon as they become aware of such problems.

II. - Where investment services providers are given the task of supervising or organising the settlement of an executed order, they shall make all reasonable arrangements to ensure that the client financial instruments or funds received in settlement of the executed order are rapidly and correctly allocated to the account of the appropriate client.

III. - Investment services providers must not misuse information about client orders pending execution and they shall be required to take all reasonable measures to prevent misuse of such information by any of the relevant persons referred to in Article 313-2.

IV. - Investment services providers managing collective investment schemes or providing portfolio management services shall define the planned allocation of the orders they give beforehand. As soon as they learn that they orders have been executed, they shall transmit to the collective investment scheme depositary or the account keeper exact instructions for the allocation of the orders executed to the beneficiaries. This allocation shall be final.

### **Paragraph 2 - Grouped orders**

#### **Article 314-67**

I. - Investment services providers must not group client orders with other client orders or with transactions for their own account prior to transmission or execution, unless the following conditions are met.

1° The grouping of orders and transactions is unlikely to be detrimental overall for any of the clients whose orders have been included ;

2° Each client whose orders may be grouped is informed that the grouping may have a detrimental effect for him compared to the execution of an individual order ;

3° An order allocation policy has been established and is effectively applied to ensure by means of sufficiently specific procedures an equitable allocation of grouped orders and transactions, explaining how, in each case, the order quantities and prices determine the allocations and the treatment of partially executed orders.

II. - Where an investment services provider groups an order with one or more other client orders and the grouped order is partially executed, the provider shall allocate the corresponding transactions in accordance with its order allocation policy referred to in 3° of I.

#### **Article 314-68**

I. - Any investment services provider that has grouped a transaction for its own account with one or more client orders shall refrain from allocating the corresponding transactions in a way that is detrimental to a client.

II. - In cases where an investment services provider groups a client order with a transaction for its own account and the grouped order is partially executed, the client shall have the priority for the allocation of the corresponding transactions rather than the investment services provider.

However, if the investment services provider is able to demonstrate reasonably that, without the grouping of orders, it would not have been able to execute the order on such advantageous terms, or even at all, it may then allocate the transaction for its own account proportionately, in accordance with its order allocation policy referred to in 3° of I of Article 314-67.

III. - Investment services providers shall establish procedures under their order allocation policies referred to in 3° of I of Article 314-67 to prevent transactions for their own account executed in combination with client orders from being reallocated using procedures that are unfavourable to clients.

## **SUB-SECTION 2 - BEST EXECUTION OBLIGATION**

### **Paragraph 1 - Principles**

#### **Article 314-69**

For the purposes of I of Article L. 533-18 of the Monetary and Financial Code, investment services providers executing client orders shall take account of the following criteria to determine the relative importance of the factors referred to in I of the said Article :

- 1° The characteristics of the clients, including their status as professional or retail clients ;
- 2° The characteristics of the order concerned ;
- 3° The characteristics of the financial instruments covered by the order ;
- 4° The characteristics of the execution venues to which the order may be routed.

For the purposes of this Sub-section, “execution venue” shall mean a regulated market, a multilateral trading facility, a systematic internaliser, a market maker, another liquidity provider, or an entity that performs similar tasks in a country that is not party to the European Economic Area agreement.

#### **Article 314-70**

Investment services providers shall fulfil the obligation referred to in I of Article L. 533-18 of the Monetary and Financial Code if they execute an order or a specific aspect of an order following specific instructions given by the client with regard to the order or the specific aspect of the order.

### **Paragraph 2 - Execution of retail client orders**

#### **Article 314-71**

I. - Where investment services providers execute orders on behalf of retail clients, best execution shall be determined on the basis of the total cost.

The total cost shall be the price of the financial instrument, plus the costs relating to execution, including all the expenses incurred by the client that are directly linked to the execution of an order, along with the charges specific to the execution venue, clearing and settlement charges and all other charges that may be paid to third parties participating in the execution of an order.

II. - In order to ensure best execution when several competing execution venues are able to execute an order involving a financial instrument, investment services providers shall evaluate and compare the results that could be obtained for the client by executing the order in each of the execution venues included in the execution policy referred to in II of Article L. 533-18 of the Monetary and Financial Code that is able to execute the said order.

As part of this evaluation, investment services providers shall consider their own commissions and costs that they charge for executing an order in each of the eligible execution venues.

III. - Investment services providers shall not structure or charge their commissions in a way that introduces unfair discrimination between execution venues.

### **Paragraph 3 - Execution policy**

#### **Article 314-72**

Investment services providers shall be required to provide their retail clients with the following information about their execution policy in good time, prior to the provision of services :

- 1° The relative importance that the investment services provider attributes to the factors referred to in I of Article L. 533-18 of the Monetary and Financial Code based on the criteria referred to in Article 314-69 or the process by which the relative importance of these criteria is determined ;
- 2° A list of the execution venues in which the investment services provider has the most confidence for meeting its obligation to take all reasonable measures to obtain the best execution of its client orders on a consistent basis.



3° A clear warning that specific instructions given by a client may prevent the investment services provider from taking the measures called for and applied under its execution policy with regard to the items covered by such instructions.

This information shall be provided in a durable medium and published on a website, provided that the requirements laid down in Article 314-27 are met.

#### **Paragraph 4 - Supervision of execution policies**

##### **Article 314-73**

Investment services providers shall supervise the effectiveness of their arrangements for order execution and their policy on this matter in order to detect any deficiencies and to remedy them as appropriate. In particular, they shall periodically verify whether the execution systems stipulated under their order execution policies obtain the best possible result for the client or whether they need to modify their execution arrangements.

Investment services providers shall notify clients of any material changes in their order execution arrangements or policies.

##### **Article 314-74**

Investment services providers shall conduct an annual review of their order execution arrangements and policies.

Such a review must also be conducted whenever a material change occurs affecting the investment services provider's ability to continue obtaining best execution for its clients on a consistent basis using the execution venues stipulated under its order execution policy.

#### **SUB-SECTION 3 - OBLIGATIONS OF PROVIDERS THAT RECEIVE AND TRANSMIT ORDERS OR MANAGE PORTFOLIOS OR COLLECTIVE INVESTMENT SCHEMES**

##### **Article 314-75**

I. - Investment services providers that provide portfolio management services or manage collective investment schemes shall comply with the obligation referred to in Article 314-3 to act in the best interest of their clients or the collective investment schemes that they manage.

II. - When they transmit client orders to other entities for execution, investment services providers that provide order reception and transmission services shall comply with the obligation referred to in Article 314-3 to act in the best interest of their clients.

III. - Investment services providers shall take the measures referred to in IV, V and VI to comply with I and II.

IV. - Investment services providers shall take all reasonable measure to obtain the best possible results for their clients or for the collective investment schemes that they manage, taking into account the measures referred to in Article L. 533-18 of the Monetary and Financial Code. The relative importance of these factors shall be determined with reference to the criteria defined in Article 314-69, and, in the case of retail clients, the requirement laid down in I of Article 314-71.

Investment services providers sending orders to another entity for execution shall meet the obligations referred to in I or II and shall not be required to take the measures referred to in the preceding paragraph in cases where they follow specific instructions from their clients.

V. - Investment services providers shall establish and implement policies that enable them to comply with the obligation referred to in IV. Such policies shall select the entities to which orders for each class of instruments are transmitted for execution. The selected entities must have order execution mechanisms that enable the investment services providers to comply with their obligations under the terms of this Article when they transmit orders to that entity for execution. Investment services providers shall provide their clients or unit holders or shareholders in collective investment schemes that they manage with appropriate information about their policies developed for the purposes of this paragraph. In the case of collective investment schemes, this information shall be included in the management report.

VI. - Investment services providers shall monitor the effectiveness of the policies established for the purposes of V on a regular basis, especially with regard to the quality of the execution provided by the entities selected under their policies. Where appropriate, they shall remedy any deficiencies brought to light.

In addition, investment services providers shall be required to conduct an annual policy review. Such a review must also be conducted each time a material change occurs that has an effect on an investment services provider's ability to continue obtaining best execution for its clients or the collective investment schemes that it manages.

VII. - This Article shall not apply when an investment services provider that provides portfolio management services, or order reception and transmission services, or that manages collective investment schemes, also executes orders received or resulting from its investment decisions. In this case, the provisions of Article L. 533-18 of the Monetary and Financial Code and Sub-section 2 of this Section shall apply.

## **Section 7 - Fees**

### **SUB-SECTION 1 - PROVISIONS COMMON TO ALL INVESTMENT SERVICES : INDUCEMENTS**

#### **Article 314-76**

Investment services providers shall be deemed to be acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or receive one of the following fees, commissions, or non-monetary benefits :

1° A fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client ;

2° A fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied :

a) The client is clearly informed of the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount.

This disclosure is made in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service. Investment services providers may disclose the essential terms of the arrangements relating to the fees, commissions or non-monetary benefits in summary form, provided that they undertake to disclose further details at the request of the client and provided that they honour that undertaking.

b) The payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service to the client and not impair compliance with the investment services provider's duty to act in the best interests of the client.

3° Proper fees which enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the investment services providers' duties to act honestly, fairly and professionally in accordance with the best interests of their clients.

### **SUB-SECTION 2 - SPECIFIC PROVISIONS FOR PORTFOLIO MANAGEMENT AND COLLECTIVE INVESTMENT SCHEME MANAGEMENT**

#### **Article 314-77**

Portfolio management companies shall be remunerated for their management of portfolios by a management fee and, if applicable, a proportionate share of subscription and redemption fees or by incidental fees, under the conditions and within the limits set by Articles 314-78 to 314-84 and 411-53-1. These conditions and limits shall apply whether the fees are charged directly or indirectly.

#### **Article 314-78**

The management fee may include a variable portion tied to the outperformance of portfolio relative to the investment objective, provided that :

1° It is expressly provided for in the simplified prospectus of the collective investment scheme.

2° It is consistent with the investment management objective as set forth in the prospectus.

3° The share of outperformance allocated to the management company must not induce that company to take excessive risk with regard to the investment strategy, investment objective and risk profile set forth in the prospectus of the collective investment scheme.

#### **Article 314-79**

All fees and commissions paid by clients or by collective investment schemes for transactions in portfolios under management, with the exception of subscription and redemption transactions relating to collective investment schemes or investment funds, shall be trading costs. They include :

1° Intermediation costs, taxes and duties included, charged directly or indirectly by third parties that provide :

a) Order reception and transmission services and order execution services on behalf of third parties referred to in Article L. 321-1 of the Monetary and Financial Code ;

b) Investment decision aid services and order execution services specified in an AMF Instruction ;

2° If applicable, a turnover commission shared exclusively between the portfolio management company and the custodian of the scheme or the custody account keeper for the portfolio under management.

This turnover commission may also benefit :

a) A company to which the financial management of the portfolio has been delegated ;

b) Persons to which the collective investment scheme custodian or custody account keeper has delegated all or part of the responsibility for safekeeping of portfolio assets ;

c) An affiliated company providing only the services of collective investment scheme management for third parties, order reception, transmission and execution services, principally for collective investment schemes managed by the portfolio management company or by an affiliated company as part of its collective investment scheme management activity or its portfolio management on behalf of third parties.

These provisions do not apply to fees and commissions incurred in connection with advisory and arrangement services, financial engineering, advice on industrial strategy, mergers and acquisitions, or initial public offerings of unlisted securities in which a venture capital fund (*fonds commun de placement à risques*, FCPR) has invested.

The sharing of any of the fees or commissions referred to in Point 1° is prohibited unless it would be exclusively and directly of benefit to the client or the collective investment scheme. Agreements under which the investment services provider shares some of the intermediation fees referred to in a of Point 1° on the occasion of a transaction in a financial instrument shall be prohibited.

#### **Article 314-80**

Without prejudice to Article 314-78, the income, fees and capital gains generated by management of the collective investment scheme, along with any rights attached thereto, shall belong to the unit holders and shareholders. The collective investment scheme shall be the sole beneficiary of the sharing of management fees and subscription and redemption commissions arising from its investments in other schemes or investment funds.

The portfolio management company, the service provider handling the financial management, the custodian, the custodian's delegatee and the affiliated company referred to in c of point 2° of Article 314-79 may receive a share of the income from securities financing transactions using securities belonging to the collective investment scheme, under the conditions set forth in the full prospectus of the collective investment scheme.

The full prospectus of the collective investment scheme may stipulate that a portion of the income be paid to one or more associations or foundations having a purpose in the public interest.

#### **Article 314-81**

Portfolio management companies may enter into written commission-sharing agreements under which the investment services provider providing order execution service shares the portion of the intermediation fees that it charges for investment decision-making aid services and order execution services with the third party providing such services.

Portfolio management companies may enter into such agreements, provided that the agreements :

1° Do not violate the provisions of Article 314-75 ;

2° Comply with the principles referred to in Articles 314-82 and 314-83.

#### **Article 314-82**

The intermediation fees stipulated in Article 314-79 shall pay for services that are of direct interest for the clients or the collective investment scheme. Such services shall be covered by a written agreement subject to the provisions of Articles 314-59 and 314-64. The portfolio management company shall review such expenses on a regular basis.

If the portfolio management company uses investment decision aid and order execution services and if the intermediation fees for the previous year came to more than EUR 500,000, it shall compile a document entitled "Report on Intermediation Fees" that shall be updated as needed. The report shall specify the terms and conditions on which the portfolio management company used investment decision aid and order execution services, along with the breakdown between :

1° Intermediation fees related to order reception, transmission and execution services ;

2° Intermediation fees related to investment decision aid and order execution services.

The breakdown for applying costs shall be formulated as a percentage and based on an established method using relevant and objective criteria. It may be applied to :

- 1° Either all the assets in a specific collective investment scheme category ;
- 2° Or all the assets that the portfolio management company has under management for a specific category of clients ;
- 3° Or any other procedure suited to the method used for applying costs.

If applicable, the "Report on Intermediation Fees" shall specify the percentage of all intermediation fees in the previous year shared with third parties under the terms of the commission sharing agreements referred to in Article 314-81 for the fees referred to in *b* in Point 1° of Article 314-79. It shall also give an account of the measures implemented to prevent or deal with any potential conflicts of interest in the selection of service providers.

This document shall be posted to the portfolio management company's website, if the company has one. The management report for each collective investment scheme and the management report for each portfolio under management shall refer explicitly to this document. If the portfolio management company does not have a website, the document shall be included in the management report for each collective investment scheme and the management report for each portfolio under management.

#### **Article 314-83**

The intermediation fees referred to in *b* in Point 1° of Article 314-79 :

- 1° Must be directly related to order execution ;
- 2° Must not cover :
  - a) The provision of goods or services that correspond to resources that the portfolio management should have for its programme of activity, such as administrative or accounting management, the purchase or leasing of premises, or compensation for staff ;
  - b) The provision of services for which the portfolio management company receives a management commission.

#### **Article 314-84**

*(Deleted by the Order of 18 March 2008)*

#### **Article 314-85**

Where units or shares of collective investment schemes or investment funds managed by a portfolio management company are purchased or subscribed by that company or an affiliated company on behalf of a collective investment scheme or other managed portfolio, subscription and redemption commissions shall be prohibited, except for the portion retained by the scheme in which the investment has been made.

#### **Article 314-85-1**

The provisions of Articles 314-79 to 314-85 shall apply to investment services providers providing portfolio management service on behalf of third parties.

## **Section 8 - Information about the provision of services**

### **SUB-SECTION 1 - REPORTING ON ORDER EXECUTION SERVICES AND ORDER RECEPTION AND TRANSMISSION SERVICES**

#### **Article 314-86**

Investment services providers that transmit or execute an order, other than for portfolio management, on behalf of a client, shall take the following measures in respect of that order :

- 1° The investment services provider must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order ;
- 2° In the case of a retail client, the investment services provider must send the client a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the investment services provider from a third party, no later than the first business day following receipt of the confirmation from the third party.

Points 1° and 2° shall not apply where the confirmation from the investment services provider contains the same information as a confirmation that is to be promptly dispatched to the client by another person.

**Article 314-87**

Investment services providers shall supply the client, on request, with information about the execution status of his order.

**Article 314-88**

In the case of orders from retail clients relating to units or shares in a collective investment scheme which are executed periodically, investment services providers shall either take the action specified in Point 2° of Article 314-86 or provide the client, at least once every six months, with the information referred to in Article 314-89 in respect of those transactions.

**Article 314-89**

The notice referred to in Point 2° of Article 314-86 shall include such of the following information as is applicable and, where relevant, in accordance with Table 1 of Annex I to Regulation (EC) 1287/2006 of 10 August 2006 :

- 1° The identification of the investment services provider making the report ;
- 2° The name or other designation of the client ;
- 3° The trading day ;
- 4° The trading time ;
- 5° The type of order ;
- 6° The identification of the execution venue ;
- 7° The identification of the instrument ;
- 8° The buy/sell indicator ;
- 9° The nature of the order if other than buy/sell ;
- 10° The quantity ;
- 11° The unit price.

Where the order is executed in tranches, the investment services provider may supply the client with information about the price of each tranche or the average price. In the latter case, it shall supply the retail client with information about the price of each tranche upon request.

- 12° The total price ;
- 13° The total sum of the commissions and expenses charged and, where the retail client so requests, an itemised breakdown ;
- 14° The client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery, as well as the appropriate account details, where these details and responsibilities have not previously been notified to the client ;
- 15° If the client's counterparty was the investment services provider itself or any person in the investment services provider's group or another client of the investment services provider, a statement that this was the case, unless the order was executed through a trading system that facilitates anonymous trading.

The investment services provider may provide the client with the information referred to in this Article using standard codes, if it also provides the client with an explanation of the codes used.

**Article 314-90**

Where investment services providers handle retail client accounts that include an uncovered open position in a contingent liability transaction, they shall also report to the retail client any losses exceeding any predetermined threshold, agreed between the provider and the client, no later than the end of the business day on which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

**SUB-SECTION 2 - REPORTING ON PORTFOLIO MANAGEMENT SERVICE****Paragraph 1 - Provisions common to all clients****Article 314-91**

Investment services providers which provide the service of portfolio management to clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client, unless such a statement is provided by another person.

**Article 314-92**

In cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, investment services providers shall promptly provide the client with the essential information concerning a transaction in a durable medium upon the execution of that transaction.

**Article 314-93**

An AMF Instruction shall define the requirements for informing clients about portfolio management transactions carried out and their frequency.

**Paragraph 2 - Specific provisions for retail clients****Article 314-94**

In the case of retail clients, the periodic statement referred to in Article 314-91 shall include the following information :

- 1° The name of the investment services provider ;
- 2° The name or other designation of the client's account ;
- 3° A statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period ;
- 4° The total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request ;
- 5° A comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment services provider and the client ;
- 6° The total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio ;
- 7° Information about corporate actions creating rights in relation to financial instruments held in the client's portfolio ;
- 8° For each transaction executed during the period, the information referred to in 3° to 12° of Article 314-89 where relevant. However, if the client elects to receive information about executed transactions on a transaction-by-transaction basis, Article 314-92 shall apply.

**Article 314-95**

The periodic statement shall be provided to retail clients once every six months, except in the following cases :

- 1° Where the client so requests, the periodic statement must be provided every three months.

Investment services providers shall inform their clients that they are entitled to demand such statements ;

- 2° In cases where Article 314-92 applies, the periodic statement must be provided at least once every 12 months, except in the case of transactions in :

- a) A financial instrument referred to in Article L. 211-1 of the Monetary and Financial Code provided that it carries the right to buy or sell another financial instrument, or gives rise to a cash payment, determined by reference to financial instruments, a currency, an interest rate or rate of return, commodities or other indices or measurements ;
- b) Financial instruments referred to in 4° of Article L. 211-1 of the Monetary and Financial Code ;

- 3° Where the agreement authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

**Article 314-96**

Where a retail client elects to receive information about executed transactions on a transaction-by-transaction basis in accordance with Article 314-92, the investment services provider must send him a notice confirming the transaction and containing the information referred to in Article 314-89 no later than the first business day following that execution or, if the confirmation is received by the investment services provider from a third party, no later than the first business day following receipt of the confirmation from said third party.

The preceding paragraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

**Article 314-97**

Where investment services providers provide portfolio management for a retail client whose portfolio includes an uncovered open position in a contingent liability transaction, they shall also report to the retail client any losses exceeding any predetermined threshold, agreed between the provider and the client, no later than the end of the business day on which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

**SUB-SECTION 3 - REPORTING ON COLLECTIVE INVESTMENT SCHEME MANAGEMENT****Article 314-98**

The fees and commissions paid for management of collective investment schemes must be disclosed in full to unit holders and shareholders.

**Article 314-99**

Portfolio management companies must provide holders with all necessary information about the management of the collective investment schemes.

An AMF Instruction shall specify the terms and conditions on which annual reports shall indicate the frequency of the transactions carried out by collective investment schemes.

Collective investment schemes' annual reports must contain, where relevant, information about the financial instruments in the portfolio that have been issued by the portfolio management company or entities from its group. The annual reports must also mention, where relevant, collective investment schemes and investment funds managed by the portfolio management company or entities from its group.

**Article 314-100**

Portfolio management companies shall draw up a document titled "Voting Policy", which shall be updated as necessary and sets out the terms and conditions on which they intend to exercise the voting rights attached to the securities held by collective investment schemes that they manage.

In particular, this document shall describe :

1° The organisational structure within the portfolio management company that enables it to exercise such voting rights. It shall specify which bodies within the portfolio management company are responsible for examining and analysing the resolutions put forward and which bodies are responsible for deciding how the votes shall be cast.

2° The principles to which the portfolio management company intends to refer in determining in which cases it will exercise the voting rights. These principles may include holding thresholds that the portfolio management companies set for taking part in voting on resolutions submitted to general meetings. In such cases, portfolio management companies shall explain their choice of threshold. These principles may also concern the nationality of the issuing companies whose securities are held by collective investment schemes managed by the portfolio management company, the investment policy of the schemes, and the use of securities financing transactions by the portfolio management company.

3° The principles to which the portfolio management company intends to refer when exercising voting rights. The portfolio management company's document shall present its voting policy, heading by heading, corresponding to the types of resolution submitted at general meetings. The headings shall cover, *inter alia* :

- a) Decisions requiring an amendment of the constitutive rules,
- b) Approval of the financial statements and appropriation of profit or loss,
- c) Election and dismissal of governing bodies,
- d) Regulated agreements,

- e) Equity security issuance and buyback programmes,
- f) Appointment of statutory auditors,
- g) Any other specific type of resolution that the portfolio management company wishes to identify.

4° A description of procedures to detect, prevent and manage conflicts of interest that could affect the portfolio management company's independent exercise of voting rights.

5° An indication of the way in which it customarily exercises voting rights, such as by physically attending general meetings, using proxies without indicating a specific proxy holder, or voting by mail.

This document shall be made available to the AMF. It may be viewed on the portfolio management company's website or at its registered office under the terms and conditions specified in the simplified prospectus.

#### **Article 314-101**

In a report drawn up within four months of the end of its financial year and appended to the management report of the board of directors or executive board, as the case may be, portfolio management companies shall report on how they have exercised voting rights in the past year.

This report shall specify, *inter alia* :

- 1° The number of companies in which the portfolio management company exercised voting rights, compared with the total number of companies in which it had voting rights ;
- 2° The cases in which the portfolio management company considered that it could not adhere to the principles set forth in its voting policy document ;
- 3° The conflicts of interest that the portfolio management company had to deal with in exercising voting rights attaching to securities held by the collective investment schemes that it manages.

This report shall be made available to the AMF. It must be available for viewing on the portfolio management company's website or at its registered office under the terms and conditions specified in the simplified prospectus.

#### **Article 314-102**

At the request of the AMF, portfolio management companies shall disclose to the AMF how they voted, or whether they abstained from voting, on each resolution and the reasons for those votes or abstentions.

To any holder of scheme units or shares who so requests, portfolio management companies shall make available disclosures relating to the exercise of voting rights on each resolution submitted to the general meeting of an issuer, whenever the number of that issuer's securities held by the scheme managed by the portfolio management company reaches or exceeds the holding threshold specified in the voting policy document referred to in Article 314-100.

These disclosures must be available for viewing at the registered office of the portfolio management company and on its website.

#### **Article 314-103**

In the annual reports of venture capital funds (FCPR), portfolio management companies shall report on their practice for the use of voting rights attaching to securities held in the funds.

The measures referred to in Articles 314-100, 314-101 and 314-102 shall apply for securities held by venture capital funds that are traded on a regulated market of a State party to the European Economic Area agreement or on a recognised foreign market.

#### **Article 314-104**

The measures referred to in Articles 314-100, 314-101 and 314-102 shall apply where management companies for Employee Investment Funds (FCPE) have been empowered to exercise the voting rights attaching to securities held by the funds.

### **SUB-SECTION 4 - REPORTING ON FINANCIAL INSTRUMENTS HELD ON BEHALF OF CLIENTS**

#### **Article 314-105**

I. - Investment services providers holding financial instruments on behalf of clients shall send their clients a statement in a durable medium of their instruments at least once a year, unless the same information has already been provided in another periodic information notice.

II. - The statement of the clients' assets referred to in I must include the following information :



1° Details of all the financial instruments that the investment services provider held for the client at the end of the reporting period ;

2° The extent to which the client's financial instruments were used for any securities financing transactions ;

3° A quantification of any benefit accruing to the client from his participation in any securities financing transactions, and the basis on which this benefit accrues to him.

If the portfolio contains one or more transactions that are pending finalisation, the information referred to in Point 1° may be dated on either the transaction date or the settlement date, provided that such date is the same for all the data of this type given in the statement.

III. - Investment services providers holding financial instruments and providing portfolio management service may include the statement of client assets referred to in I in the periodic statements that they provide to the same clients under the terms of Article 314-91.

## **CHAPTER V - OTHER PROVISIONS**

### **Section 1 - Production and dissemination of investment recommendations**

#### **Article 315-1**

For the purposes of this Section, "investment recommendations" shall mean the general investment recommendations referred to in Article 313-25, along with the investment research produced and disseminated by investment services providers.

Investment recommendations shall be prepared honestly, fairly and impartially. They shall be presented clearly and precisely.

They shall be disseminated promptly to ensure their newsworthiness.

#### **SUB-PARAGRAPH 1 - IDENTIFICATION OF PRODUCERS OF INVESTMENT RECOMMENDATIONS AND GENERAL STANDARD FOR FAIR PRESENTATION OF RECOMMENDATIONS FOR DISSEMINATION**

#### **Article 315-2**

Any investment recommendation disseminated shall indicate clearly and prominently :

1° The identity of the investment services provider responsible for producing it and the name and position of the individual who prepared the investment recommendation ;

2° The identity of the regulatory authority with jurisdiction over the investment services provider.

#### **Article 315-3**

Investment services providers and investment analysts shall make their best efforts to ensure that :

1° Facts referred to in the investment recommendations are clearly distinguished from interpretations, estimates, opinions and other kinds of non-factual information.

2° All sources are reliable. If this is not the case, the investment recommendation shall state so clearly.

3° All projections, forecasts and price targets are clearly indicated as such, and the principal assumptions made in order to produce and use them are indicated.

4° All important sources for the investment recommendation are disclosed, including the issuer concerned and, where applicable, the fact that the recommendation was communicated to that issuer and its conclusions were modified as a consequence of such communication.

5° Any basis or method used to value a financial instrument or an issuer of a financial instrument, or to establish a price target for a financial instrument, is summarised in an appropriate manner.

6° The meaning of any recommendation made, such as "buy", "sell" or "hold", as well as any time horizon associated with such recommendation, is adequately explained, and any appropriate risk warning (including a sensitivity analysis of the assumptions used) is indicated.

7° The expected frequency of updates to the recommendation is disclosed, as is any material change in the policy with regard to the issuer.

8° The date on which the investment recommendation was first released for dissemination is clearly and prominently indicated, as are the date and time of day of any actual price mentioned for a financial instrument.

9° Where an investment recommendation differs from a recommendation issued during the previous twelve months regarding the same financial instrument or the same issuer, this change and the date of the earlier recommendation are indicated clearly and prominently.

#### **Article 315-4**

Investment services providers and investment analysts shall make their best efforts to be able to demonstrate, at the request of the AMF, that any one of their investment recommendations was reasonable at the time it was produced.

### **SUB-SECTION 2 - DISCLOSURE OF CONFLICTS OF INTEREST**

#### **Article 315-5**

Disseminated investment recommendations shall disclose any relations and circumstances concerning the investment analyst or investment services provider that one can reasonably believe likely to impair the objectivity of the recommendation. In particular, when the provider, analyst or any person who participated in the preparation of the recommendation has a significant financial interest in one or more of the financial instruments recommended, or a significant conflict of interest with the issuer recommended, this fact shall be disclosed.

#### **Article 315-6**

The information to be disclosed regarding the investment services provider or related entities in compliance with Article 315-5 shall include, as a minimum :

1° Any interests held by them or conflicts of interest involving them, knowledge of which was accessible or reasonably expected to be accessible to persons who took part in preparing the recommendation.

2° Any interests held by them or conflicts of interest involving them that were known to persons that did not take part in preparing the recommendation but had access, or can reasonably be expected to have had access, to the recommendation before it was disseminated to clients or to the public.

Where natural or legal persons working under the authority or on behalf of the provider take part in preparing the recommendation, the information to be disclosed includes, in particular and where applicable, the disclosure that their remuneration is tied to the investment services referred to in 3, 6-1 and 6-2 of Article L. 321-1 of the Monetary and Financial Code, or to the related services referred to in 3 and 5 of Article L. 321-2 of the same Code, provided by the investment services provider or any related entity.

#### **Article 315-7**

Disseminated recommendations shall disclose clearly and prominently the following information on interests and conflicts of interest of the investment services provider :

1° Major shareholdings between the investment services provider and any related entity, or between the provider and the issuer, in at least the following cases :

a) The investment services provider or any related entity holds more than 5 % of the issued share capital of the issuer.

b) The issuer holds more than 5 % of the issued share capital of the investment services provider or any related entity.

2° The investment services provider, alone or with other entities, is linked to the issuer through other significant financial interests.

3° The investment services provider or any related entity is a market maker in the issuer's financial instruments or a liquidity provider under contract with the issuer to provide liquidity for the issuer's financial instruments.

4° The investment services provider or any related entity has, during the previous twelve months, been lead manager or co-lead manager in a public offering of the issuer's financial instruments.

5° The investment services provider or any related entity is party to any other agreement with the issuer concerning provision of the investment services referred to in 3, 6-1 and 6-2 of Article L. 321-1 of the Monetary and Financial Code or the related services referred to in 3 and 5 of Article L. 321-2 of the same Code, provided such mention would not entail divulging confidential commercial information and provided such agreement has been in effect during the previous twelve months or has given rise during the same period to the payment of compensation or to the promise of payment of compensation.

6° The investment services provider and the issuer have agreed that the provider will produce and disseminate investment recommendations on the said issuer as a service to the issuer.

#### **Article 315-8**

Disseminated investment recommendations shall disclose, in general terms, the effective administrative and organisational arrangements, including information barriers, made within the investment services provider to prevent and avoid conflicts of interest with respect to investment recommendations.

#### **Article 315-9**

On a quarterly basis, the investment services provider shall publish a breakdown of the recommendations it has disseminated. This breakdown shows the proportion of recommendations that are “Buy”, “Hold”, “Sell” or equivalent terms, separately for all recommendations and for recommendations pertaining to issuers to which the provider has furnished the investment services referred to in 3, 6-1 and 6-2 of Article L. 321-1 of the Monetary and Financial Code, or the related services referred to in 3 and 5 of Article L. 321-2 of the same Code, to a significant extent during the previous twelve months.

### **SUB-SECTION 3 - ADAPTATION OF DISCLAIMER PROCEDURES**

#### **Article 315-10**

The investment services provider shall establish a procedure adapting the provisions of Articles 315-3, 315-5 and 315-7 so that they are not disproportionate when applied to oral investment recommendations.

#### **Article 315-11**

Where the provisions of Article 315-2, 4°, 5° and 6° of Article 315-3, and Articles 315-5 to 315-9 are disproportionate compared to the length of a disseminated investment recommendation, the investment services provider may make clear and prominent reference within the recommendation to the place where such disclosures can be directly and easily accessed by the public, for example, by providing a direct link to the disclosures on the investment services provider's website.

### **SUB-SECTION 4 - DISSEMINATION OF INVESTMENT RECOMMENDATIONS PRODUCED BY THIRD PARTIES**

#### **Article 315-12**

The provisions of Articles 327-4 to 327-8 shall apply to investment services providers disseminating investment recommendations produced by others.

#### **Article 315-13**

When investment services providers disseminate investment research and recommendations produced by third parties, they must comply with the following requirements :

- 1° They must indicate clearly and prominently their own identity and the name of their competent authority.
- 2° They must meet the requirements imposed on the producer in the fourth sentence of Article 315-6 and in Articles 315-7 to 315-11, if the producer of the investment research has not previously disseminated it via a channel to which a large number of persons have access.

### **SUB-SECTION 5 - TRANSPARENCY IN INVESTMENT RESEARCH DISSEMINATED FROM ABROAD**

#### **Article 315-14**

The provisions of Articles 315-1 to 315-8 and 315-10 to 315-12 shall apply to research disseminated from abroad that is accessible to investors customarily resident or established in France, whenever such research relates to issuers offering financial instruments to the public in France, that is to say :

- 1° Issuers whose financial instruments are admitted to trading on a regulated market within the meaning of Article L. 421-1 of the Monetary and Financial Code, or for which application for admission has been made ; or
- 2° Issuers whose securities are admitted to trading on a multilateral trading facility referred to in Article 424-1 of the Monetary and Financial Code.

## **Section 2 - Management of inside information and restrictions to be applied within authorised providers**

### **SUB-SECTION 1 - RULES TO PREVENT UNDUE CIRCULATION OF INSIDE INFORMATION**

#### **Article 315-15**

Authorised providers shall establish and maintain effective and adequate procedures to control the circulation and use of inside information within the meaning of Articles 621-1 to 621-3, taking into account the activities conducted by the group to which the authorised provider belongs and the organisation adopted by that group. These procedures, called "information barriers", shall provide for :

1° Identification of business segments, divisions, departments or any other entities likely to possess inside information ;

2° Organisation, in particular physical organisation, so as to separate entities within which the relevant persons referred to in subparagraph II of Article 313-2 are likely to possess inside information ;

3° Prohibition of disclosure of inside information by the persons possessing it to other persons, except as provided for in subparagraph 1 of Article 622-1 and after informing the compliance officer ;

4° The conditions in which the investment service provider may authorise a relevant person assigned to a given entity to provide assistance to another entity, whenever one of the two entities is likely to possess inside information. The compliance officer shall be informed whenever the relevant person assists the entity possessing inside information ;

5° The manner in which the relevant person benefiting from the authorisation provided for in 4° is informed of the temporary consequences thereof on the performance of his regular duties.

The compliance officer shall be informed when this person returns to his regular duties.

### **SUB-SECTION 2 - WATCH LIST**

#### **Article 315-16**

To ensure compliance with the abstention requirement set forth in Articles 622-1 and 622-2, authorised providers shall establish and maintain an appropriate procedure for monitoring the issuers and financial instruments on which they have inside information. Such monitoring shall cover :

1° Transactions in financial instruments by the authorised provider for its own account ;

2° Personal transactions, as defined in Article 313-9, made by or on behalf of the relevant persons referred to in the first subparagraph of Article 313-10 ;

3° General investment recommendations, within the meaning of Article 313-25, disseminated by the authorised provider.

To this end, the compliance officer shall draw up a watch list of the issuers and financial instruments on which the authorised provider has inside information.

The relevant entities shall inform the compliance officer at once when they believe they possess inside information.

In such case, the issuer or the financial instruments to which the inside information pertains shall be put on the watch list, under the supervision of the compliance officer.

The watch list shall indicate the reason for adding an issuer or financial instrument to the list and the names of the persons who have access to the inside information about it.

The provisions of the foregoing subparagraph shall not apply where the authorised provider, in its capacity as issuer of financial instruments, maintains the list provided for in Article 223-27.

The relevant entities shall inform the compliance officer when they believe that information they had previously reported pursuant to the third subparagraph has ceased to be inside information.

The contents of the watch list are confidential. Dissemination of items on the watch list is restricted to the persons designated by name in the procedures referred to in the first subparagraph of Article 315-15.

**Article 315-17**

The investment services provider shall exercise supervision in accordance with the procedures set forth in Article 315-16. It shall take appropriate measures if it detects an anomaly.

The investment services provider shall keep a record on a durable medium of the measures it has taken in the event of an anomaly or, if it takes no measures, of the reasons for so doing.

**SUB-SECTION 2 - RESTRICTED LIST****Article 315-18**

Authorised providers shall establish and maintain an appropriate procedure for monitoring compliance with any restrictions that apply to :

- 1° Transactions in financial instruments by the authorised provider for its own account ;
- 2° Personal transactions, as defined in Article 313-9, made by or on behalf of the relevant persons referred to in the first subparagraph of Article 313-1 ;
- 3° General investment recommendations, within the meaning of Article 313-25, disseminated by the authorised provider.

II. - To this end, the compliance officer shall establish a restricted list. This list includes those issuers or financial instruments in which the authorised provider must restrict its activities, or the activities of relevant persons, because of :

- 1° Legal or regulatory provisions to which the authorised provider is subject other than those resulting from the abstention requirements set forth in Articles 622-1 and 622-2 ;
- 2° Undertakings made on the occasion of a financial offering.

When an authorised provider deems it necessary to prohibit or restrict the performance of an investment service, an investment activity or an ancillary service in respect of certain issuers or financial instruments, those issuers and financial instruments shall also be included on the restricted list.

**Article 315-19**

Authorised providers shall determine, based on the restricted list, which entities are subject to the restrictions referred to in Article 315-18 and how those restrictions shall apply.

They shall inform the relevant persons affected by the restrictions of the list and the nature of the restrictions.

**Articles 315-20 to 315-30**

*(deleted by the Order of 5 August 2008)*

**SUB-SECTION 4 - LISTING OF A COMPANY'S SECURITIES ON A REGULATED MARKET IN FINANCIAL INSTRUMENTS****Article 315-31**

The authorised provider advising a company on an initial listing on a financial instrument market and proposing a contract to provide services in this respect (hereinafter "lead manager") shall ensure that, prior to signing such contract, the senior managers of said company have received information describing the listing process and the legal and regulatory obligations of the company being listed.

To properly inform and prepare the company's senior managers, the lead manager shall ensure that there is sufficient time between the signing of the contract and the date the listing actually takes place. This period shall not be less than three months.

**Article 315-32**

The lead manager shall establish a written agreement with the company on the nature and cost of the services the lead manager proposes to provide in preparing and carrying out the initial listing and monitoring the market in the securities once listed. The authorised provider shall specify the tasks incumbent on the company in connection with its initial listing.

**Article 315-33**

The authorised provider must make a valuation of the company in accordance with the principles set forth in Article 314-3. To this end, the authorised provider must use recognised valuation methods and must base its valuation on

objective data pertaining to the company itself, the markets in which it does business, and the competition that it faces.

#### **Article 315-34**

The lead manager is responsible for reaching a detailed agreement with the company or the seller of the shares put on the market regarding a possible over-allotment clause for increasing the size of the offering beyond that initially planned, in accordance with the requirements of Article L. 225-135-1 of the Commercial Code. The terms and conditions of such clause must be described in the prospectus.

The use of such clause by the authorised provider for any purpose other than to cover higher than expected demand is incompatible with the principle of fairness mentioned in the third sentence of Article 314-3.

#### **Article 315-35**

In allotting securities, the lead manager, in cooperation with the company concerned, ensures that the various categories of investors, other than those referred to in Article 315-37, are treated fairly. When several allotment procedures intended specifically for individual investors are applied concurrently, the lead manager shall ensure that the allotment percentages resulting therefrom are substantially equivalent.

The lead manager shall make its best efforts to satisfy demand for the securities from individual investors to a meaningful extent. This objective is deemed to have been met when there is a procedure, centralised by the market operator and characterised by an allotment proportional to applications submitted, under which at least 10% of the overall offering amount is put on the market and made accessible to individual investors.

The lead manager shall endeavour to avoid an obvious imbalance, to the detriment of individual investors, between the allotment for such investors and the allotment for institutional investors. Thus, when a placing procedure intended specifically for institutional investors coexists with one or more procedures intended specifically for individual investors, the lead manager shall endeavour to provide for a transfer mechanism to avoid an imbalance of the kind mentioned above.

#### **Article 315-36**

Any authorised provider that receives and transmits orders from clients that do not have direct access to the placing procedure but seek to participate in that procedure must inform such clients of the conditions under which the authorised provider's allotment will be apportioned among such clients.

#### **Article 315-37**

In a placing, the lead manager ensures that for any tranche reserved for a specified category of investors connected with the issuer (e.g. suppliers or clients), the characteristics of such tranche, in particular the number of securities reserved, the investors concerned, and the allotment conditions, are indicated in the prospectus and that the public is informed as quickly as possible of any changes in those characteristics.

If natural persons connected with the company (shareholders, senior managers, employees or third parties whom such persons are authorised to represent) are allowed to submit orders to the placing, the lead manager ensures that information equivalent to that referred to in the above paragraph is disclosed.

#### **Articles 315-38 to 315-41**

*(deleted by the Order of 5 August 2008)*

### **Section 3 - Reporting suspicious transactions to the AMF**

#### **Article 315-42**

The report provided for in Articles L. 621-17-2 to L. 621-17-7 of the Monetary and Financial Code may be made by e-mail, letter, facsimile or telephone. In the latter case, the report shall be confirmed in writing.

The written report shall comply with the standard model described in an AMF Instruction.

#### **Article 315-43**

The transactions to be reported under Article L. 621-17-2 of the Monetary and Financial Code shall also include securities market orders.

**Article 315-44**

The persons referred to in Article L. 621-17-2 of the Monetary and Financial Code shall adopt organisational structures and procedures to meet the requirements of Articles L. 621-17-2 to L. 621-17-7 of the Monetary and Financial Code and of Articles 315-42 and 315-43 herein.

Having regard to the recommendations of the Committee of European Securities Regulators, the purpose of these organisational structures and procedures shall be to establish and update a typology of suspicious transactions in order to identify those that should be reported.

**Section 4 - Publication of transactions in shares listed on a regulated market****Article 315-45**

The publication of the transactions referred to in Article L. 533-24 of the Monetary and Financial Code shall be as close to real time as possible, under reasonable business conditions and in a form that is easily accessible for other market participants.

Such information shall be made public in accordance with the procedures set forth in Regulation (EC) 1287/2006 of 10 August 2006.

**Section 5 - Reporting transactions to the AMF****Article 315-46**

I. - Investment services providers shall report to the AMF on the transactions they carry out on any financial instrument admitted to trading on a regulated market in a State party to the European Economic Area agreement or on an organised multilateral trading facility within the meaning of Article 524-1, regardless of where and how said transactions are executed.

This requirement also applies to the French-based branches of an investment services provider that are authorised in a State party to the European Economic Area agreement other than France with respect to the transactions they carry out on French territory. Such branches also have the option of informing the AMF of reports relating to transactions executed outside French territory.

Transactions carried out by an investment services provider's branch that is based in a State party to the European Economic Area agreement other than France need not be reported to the AMF if they are reported to the competent authority of said state.

II. - The transactions referred to in paragraph I include transactions undertaken for own account by an entity mentioned therein that have been entrusted for execution to another investment services provider authorised in a State party to the European Economic Area agreement or by an equivalent foreign institution.

III. - The report shall pertain to the transactions specified in Article 5 of Regulation (EC) No 1287/2006 of 10 August 2006 and shall be made once the transaction has been effected or by the following business day at the latest.

IV. - The provisions of this article shall not apply where the entity provides the services of receiving and transmitting orders for third parties, as defined in Article D. 321-1 of the Monetary and Financial Code.

**Article 315-47**

The content of the report referred to in Article 315-46 is specified in Annex 1 of Regulation (EC) No 1287/2006 of 10 August 2006.

Reports shall also include the following information :

- 1° the settlement date for the financial instrument, as agreed by the parties;
- 2° the amount exchanged in respect of the transaction.

**Article 315-48**

I. - Subject to the provisions of paragraph II, the entities referred to in Article 315-46 shall report their transactions to the AMF, in accordance with the technical procedures specified in an AMF instruction, either

- 1° directly, using the direct procedure established with the AMF and described in an AMF instruction, or
- 2° by appointing a third party to implement said procedure.

II. - The entities referred to in paragraph I of Article 315-46 are not required to report their transactions to the AMF if the report referred to in Article 315-47 is sent to the AMF, in accordance with the technical procedures specified in an AMF instruction, either :

1° by a regulated market or a multilateral trading facility in a State party to the European Economic Area agreement, for transactions effected on their systems, provided that the rules of said facility distinguish between own-account dealing and transactions undertaken on behalf of its members, or

2° by an order matching or reporting system that meets the criteria specified in an AMF instruction.

## **Section 6 - Anti money laundering obligations**

### **SUB-SECTION 1 - PROVISIONS COMMON TO ALL INVESTMENT SERVICES PROVIDERS**

#### **Article 315-49**

Investment services providers shall have organisational structures and procedures that enable them to comply with the vigilance and disclosure requirements provided for in Title VI of Book V of the Monetary and Financial Code relating to the fight against money laundering and terrorist financing.

### **SUB-SECTION 2 - PROVISIONS ON PORTFOLIO MANAGEMENT COMPANIES**

#### **Article 315-50**

The provisions of this Sub-section shall apply to all activities of portfolio management companies.

#### **Article 315-51**

For the purposes of this Sub-section :

1° "Investor" shall mean, as the case may be :

- a) The client under an individual portfolio management contract,
- b) The holder of units or shares in a collective investment scheme or other investment fund,
- c) The person to whom a portfolio management company provides the investment service of order reception and transmission,
- d) The person solicited by a portfolio management company as a prospective client,
- e) The person who receives advice from a portfolio management company as part of the company's activities.

2° "Equivalent foreign institution" shall mean :

- a) A foreign institution that, under the law of its home country, is authorised to engage in the banking or banking-related transactions referred to in Articles L. 311-1 and L. 311-2 of the Monetary and Financial Code, and is based in a Member State of the European Community or a State that is a member of the international body for cooperation and coordination for the fight against money laundering ;
- b) A subsidiary or branch of a foreign institution as defined in a) above, or a foreign subsidiary of the portfolio management company that meets the following two criteria :
  - Its registered office is not located in, nor does it do business in, States or territories whose laws have been recognised as inadequate, or whose practices are considered as a hindrance to the fight against money laundering and terrorist financing, by the international body for cooperation and coordination for the fight against money laundering.
  - It has taken the measures to fight money laundering and terrorist financing specified in Article L. 563-3 of the Monetary and Financial Code.

3° "Investment fund" shall mean an undertaking under foreign law that is managed on behalf of third parties and whose assets are invested in financial instruments.

#### **Article 315-52**

Portfolio management companies must demonstrate constant vigilance and have adequate organisational structures and internal procedures to ensure compliance with the provisions of Title VI of Book V of the Monetary and Financial Code. They shall adopt written internal rules describing the procedures to be followed and the measures to be taken in order to, inter alia :



- 1° Obtain and verify the identity of the investor before entering into any contractual relationship ;
- 2° Examine any unusually complex transaction that appears to have no economic justification ;
- 3° Report the suspicious amounts or transactions referred to in Article L. 562-2 of the Monetary and Financial Code to the authority instituted by Article L. 562-4 of the same code.
- 4° Retain written records of the vigilance measures it has implemented.

#### **Article 315-53**

The methods and procedures for the measures described in the internal rules referred to in Article 315-52 shall be adapted to the service provided, to the means of providing it, to the nature of the proposed transaction, to the nature and corporate form of the investor, to the status of the investor and, where applicable, to the status of persons acting for their own account or on behalf of others, as well as to the way in which the service is marketed. In particular, whenever :

1° The portfolio management company receives subscription or redemption orders directly from an investor, or contracts directly with the investor for asset management or order reception-transmission service, it shall make the verifications called for in Title VI of Book V of the Monetary and Financial Code.

2° The portfolio management company has no direct relation with the investor and has entrusted the marketing of the collective investment scheme or investment fund to a third party that is a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or an equivalent foreign institution, the portfolio management company shall obtain conclusive documentary evidence of the identity and status of that institution and the existence therein of procedures to fight money laundering and terrorist financing. The portfolio management company shall take the measures called for in Title VI of Book V of the Monetary and Financial Code for subscription and redemption orders sent to it by that institution.

3° The portfolio management company has no direct relation with the investor and has entrusted the marketing of the collective investment scheme or investment fund to a third party that is not a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or an equivalent foreign institution and its registered office is not located in a State or territory whose laws have been recognised as inadequate, or whose practices are considered as a hindrance to the fight against money laundering and terrorist financing by the international body for cooperation and coordination for the fight against money laundering, the portfolio management company shall obtain all conclusive documentary evidence of the identity and status of that third party and the existence therein of procedures to fight money laundering and terrorist financing. The portfolio management company enters shall enter an agreement with the third party under which the third party is bound :

a) Pursuant to the law of its own country, to perform all the investor identity checks called for in the recommendations of the international body for cooperation and coordination for the fight against money laundering ; and

b) To meet any additional preventive obligations to fight money laundering and terrorist financing that the management company may request after conducting its own checks.

The third party shall undertake to produce, upon request of the portfolio management company, all items that the company requires in order to verify that the procedures and controls implemented by the third party comply with its contractual obligations under the aforementioned agreement.

The portfolio management company shall take the measures called for in Title VI of Book V of the Monetary and Financial Code for subscription and redemption orders sent to it by the third party.

4° The portfolio management company has no direct relation with the investor and has entrusted the marketing of the collective investment scheme or investment fund to a third party that is not a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or an equivalent foreign institution and its registered office is located in a State or territory whose laws have been recognised as inadequate, or whose practices are considered as a hindrance to the fight against money laundering and terrorist financing by the international body for cooperation and coordination for the fight against money laundering, that third party shall undertake to provide the portfolio management company with the information it needs to make the verifications required under Title VI of Book V of the Monetary and Financial Code ;

5° The portfolio management company has no direct relation with the investor and has not entrusted the marketing of the collective investment scheme or investment fund to a third party, it shall ensure that the subscription or redemption order is received by a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or an equivalent foreign institution. The portfolio management company shall carry out the verifications required under Title VI of Book V of the Monetary and Financial Code with regard to that institution.

6° The portfolio management company has no direct relation with the investor and it has not entrusted the marketing of the collective investment scheme or investment fund to a third party and the subscription or redemption order is not received by a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or

an equivalent foreign institution, it shall carry out the verifications required under Title VI of Book V of the Monetary and Financial Code itself.

In any event, the portfolio management company shall be responsible for compliance with the requirements in Title VI of Book V of the Monetary and Financial Code.

#### **Article 315-54**

When a third party keeps the issuer account of the collective investment scheme or investment fund, or performs custody account-keeping for the assets thereof, or centralises subscription and redemption orders for units or shares thereof, the portfolio management company shall enter into an agreement with the third party calling for the latter to implement the measures to fight money laundering and terrorist financing within its organisation, but only after it has verified the identity and status of the third party and established that the latter is a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or an equivalent foreign institution. If the portfolio management company entrusts one or more of these functions to a third party without such status, the third party shall undertake to provide the portfolio management company with all the information that it requires to carry out the verifications required under Title VI of Book V of the Monetary and Financial Code.

#### **Article 315-55**

Portfolio management companies shall implement monitoring systems to verify compliance with legal and regulatory requirements relating to the prevention of money laundering and terrorist financing.

#### **Article 315-56**

For the purposes of Articles L. 563-1 and L. 563-1-1 of the Monetary and Financial Code and their implementing regulations, the internal rules referred to in Article 315-52 describe the procedures and measures to be implemented regarding identification of the investor or the third party that receives subscription and redemption orders, in particular verification of that person's identity and situation before providing the service and before proceeding with orders to subscribe or redeem units or shares of collective investment schemes or other investment funds.

Information obtained on the identity and situation of the investor or the third party receiving subscription and redemption orders shall be kept up to date.

Portfolio management companies shall pay particular attention to the identity of persons resident in States or territories whose laws have been recognised as inadequate, or whose practices are considered as a hindrance to the fight against money laundering and terrorist financing, by the international body for cooperation and coordination for the fight against money laundering.

#### **Article 315-57**

Portfolio management companies' internal rules shall describe how they ensure that their foreign branches or subsidiaries meet the obligations to fight money laundering and terrorist financing set forth in Article L. 563-3 of the Monetary and Financial Code, unless local law bars them from doing so, in which case the portfolio management company shall so inform the body established by Article L. 562-4 of the Monetary and Financial Code.

#### **Article 315-58**

When they implement their investment policies for their own account or for third parties, portfolio management companies shall assess the risk of money laundering and terrorist financing and establish procedures to oversee the investment selections made by their employees.

In particular, they shall identify any financial instruments issued by entities acting in the form or on behalf of trusts or any other asset management structures in which the identity of the constituents or beneficiaries is not known

#### **Article 315-59**

Portfolio management companies shall implement recruitment procedures that ensure compliance with the provisions of Title VI of Book V of the Monetary and Financial Code.

At the time of hiring, and periodically thereafter, their staff must be given information on and training in the obligations relating to the fight against money laundering and terrorist financing, in particular on applicable regulations and amendments, on current money-laundering techniques, on prevention and detection measures, and on the methods and procedures referred to in Article 315-52.

Portfolio management companies must make persons acting on their behalf aware of the steps to be taken to ensure compliance with Title VI of Book V of the Monetary and Financial Code.

## **Section 7 - Specific provisions for the management of collective real-estate investment schemes, real-estate investment companies and special real estate management contracts**

### **SUB-SECTION 1 - SPECIAL PROGRAMME OF OPERATIONS, RESOURCES AND MANAGEMENT ORGANISATION**

#### **Article 315-60**

With the exception of Articles 314-99 to 314-104, the provisions of Chapters I to IV and of Section 6 of Chapter V of this Title shall apply to portfolio management companies when they manage collective real-estate investment schemes (*organisme de placement collectif immobilier*, OPCI) real-estate investment companies (*société civile de placement immobilier*, SCPI) and special real-estate management contracts, unless otherwise provided under this Section.

The special programme of operations referred to in Article L. 214-119 of the Monetary and Financial Code shall specify the terms and conditions on which the portfolio management company plans to provide the relevant service, describe its organisational structure and indicate the technical and human resources used for managing and monitoring real estate assets.

An AMF Instruction shall specify the contents of the programme of operations.

#### **Article 315-61**

Where the special management contract referred to in Article L. 214-119 of the Monetary and Financial Code authorises transactions in the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the same code, specific and explicit consent must be obtained from the client. This consent shall clearly indicate the authorised assets, the procedures for the transactions and the procedures for informing the client.

Termination of the contract by the portfolio management company may be subject to a notice period that is longer than the period referred to in Article 314-61.

#### **Article 315-62**

By way of derogation to the provisions of the first and third sentences of Article 312-3, the minimum capital requirement for a portfolio management company that manages one or more collective real-estate investment schemes shall be equal to EUR 225,000.

The assets of the collective real-estate investment schemes managed by the portfolio management company, including the portfolios of collective investment schemes and investment funds for which the portfolio management company has delegated management to other entities, but excluding portfolios that it manages on a delegated basis, shall be counted when calculating the additional capital requirement referred to the third paragraph of Article 312-3.

#### **Article 315-63**

The material and technical resources and the control and security systems that portfolio management companies are required to have under the terms of Article 313-54 must be, as the case may be, adequate and appropriate for the management of collective real-estate investment schemes, real-estate investment companies and real-estate asset management referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code.

Portfolio management companies must be able to monitor developments in the real-estate markets and assets referred to above, which are included in the portfolios under management, and to record and retain, under satisfactory conditions of security, information about the transactions in these assets so as to provide an audit trail.

They must be able to measure the risks incurred in such investments at all times and to assess their contribution to the risk profile of the collective real-estate investment scheme. For the purposes of Article R. 214-191 of the Monetary and Financial Code, the portfolio management company shall calculate the liabilities of collective real-estate investment schemes at all times according to the procedures specified in an AMF Instruction.

#### **Article 315-64**

The internal organisational structures of portfolio management companies must enable them to provide detailed explanations about the origins and execution of transactions in the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code.

Portfolio management companies must have special and appropriate procedures at all times for monitoring transactions involving the purchase and sale of the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code.

**Article 315-65**

Portfolio management companies may only delegate the financial management of collective real-estate investment schemes, real-estate investment companies and special management contracts for the real-estate assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code under the terms and conditions referred to in Articles 313-77 and 313-78.

The delegated management entity must have a special programme of operations for managing a collective real-estate investment scheme.

If the delegated management entity has its registered office in another country, it must have the necessary authorisations to provide management services for the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code in its home country or be subject to equivalent supervision.

**Article 315-66**

The provisions of Article 314-79 shall not apply to fees and commissions for advice or real-estate promotions relating to the purchase or sale of the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code in which the assets of a collective real-estate investment scheme or a special management contract are invested.

The nature of the fees and commissions, as well as the methods for calculating them shall be explicitly referred to in the contract or in the simplified prospectus and the detailed memorandum of the collective real-estate investment scheme.

Under the terms of Article 314-79, the sharing of fees or commissions shall be prohibited unless it would be exclusively and directly of benefit to the client or the collective real-estate investment scheme. Agreements under which the broker, intermediary or counterparty in a transaction involving one of the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code shares the fees referred to in Point 1° of Article 314-79 or the fees referred to in the first paragraph of this Article shall constitute such sharing of fees and commissions.

**SUB-SECTION 2 - REAL-ESTATE APPRAISERS****Article 315-67**

The choice of real-estate appraisers referred to in Article L. 214-111 of the Monetary and Financial Code shall be made independently and in the interest of the unit holders or shareholders.

**Article 315-68**

The portfolio management company must establish formalised and auditable procedures for selecting real-estate appraisers in accordance with Article L. 214-114 of the Monetary and Financial Code.

**Article 315-69**

Before selecting the real-estate appraisers, the portfolio management company shall verify that each real-estate appraiser :

- 1° Is a natural or legal person engaging in real-estate appraisal as their main business ;
- 2° Has appropriate experience, skill and organisational structures for the performance of its real-estate appraisal function referred to in Article 424-45 ;
- 3° Is independent from the other real-estate appraiser, the depositary, the portfolio management company and the open-ended real-estate investment company.

The portfolio management company shall establish formalised and auditable procedures for ensuring that the real-estate appraiser complies with the requirements mentioned above at all times.

**Article 315-70**

The portfolio management company shall draw up a written agreement with each real-estate appraiser that contains the following clauses :

- 1° Identification of the parties ;
- 2° Where applicable, the appraiser's signature of a professional charter ;
- 3° The information-sharing procedures to enable the appraiser to perform its tasks ;

4° The procedures for remunerating the real-estate appraiser, which should be independent of the asset value determined by the appraiser ;

5° The procedures for terminating the agreement. The notice period must be at least three months ;

6° The procedures for renewing the agreement ;

7° The notification procedures for the real-estate appraiser to inform the portfolio management company when one of the abovementioned elements changes.

#### **Article 315-71**

Each real-estate appraiser shall be entitled to delegate the performance of some its tasks to a third party, provided that :

1° The delegatee meets the requirements referred to in Article 315-69 and carries out its tasks in accordance with the provisions of Article 424-45 ;

2° The portfolio management company has given its prior consent for the delegation of tasks.

#### **Article 315-72**

At least thirty days before the appraiser's contract expires or before the termination of its contract, the portfolio management company shall file a new authorisation request with the AMF.

### **Section 8 - Miscellaneous provisions**

#### **Article 315-73**

The provisions of Chapters III, IV and V of this Title shall apply to the relevant persons referred to in II of Article 313-2.

The rules adopted by the investment services provider under the provisions of Chapters III, IV and V of this Title and applying to the relevant persons referred to in II of Article 313-2 shall constitute professional obligations for those persons.

The provisions of Chapters IV and V of this Title shall apply to the relevant persons referred to in II of Article 313-2 within the branches opened in France by investment services providers authorised in other States parties to the European Economic Area agreement.

## **TITLE II - OTHER SERVICE PROVIDERS**

### **CHAPTER I - COMPANIES OTHER THAN PORTFOLIO MANAGEMENT COMPANIES THAT MANAGE COLLECTIVE INVESTMENT UNDERTAKINGS**

#### **Section 1 - Securitisation fund management companies**

##### **SUB-SECTION 1 - AUTHORISATION**

##### **Paragraph 1 - Procedure**

#### **Article 321-1**

To receive the authorisation provided for in Article L. 214-47 of the Monetary and Financial Code, the management company shall file with the AMF an application specifying the scope of the authorisation, together with a file containing the elements specified in an AMF instruction. The AMF shall issue an acknowledgement of receipt when it receives this file.

The procedure and the terms and conditions of authorisation are set forth in an AMF instruction.

In deciding whether to issue an authorisation, the AMF shall review the elements set forth in Articles 321-4 to 321-12. It may ask the applicant to supply any additional information that it needs to take a decision.

The AMF rules on the application within three months of receiving the filing. If need be, this time limit shall be suspended until any additional information requested has been received.

The management company may not conduct any business until the AMF authorises it to do so.

#### **Article 321-2**

A reference to the authorisation number shall be included in the documents that the management company distributes to the public but such reference cannot be presented as an endorsement of the quality of management operations.

#### **Article 321-3**

The management company shall inform the AMF, using the procedures set forth in an AMF instruction, of any changes in key items in the initial application for authorisation, notably concerning direct or indirect share ownership, senior management, organisation or supervision. The AMF shall inform the company in writing of any consequences that such changes may have on the authorisation.

### **Paragraph 2 - Capital**

#### **Article 321-4**

The management company shall demonstrate that it has sufficient financial resources to properly conduct its business and meet its responsibilities.

#### **Article 321-5**

The management company shall have share capital of at least EUR 225,000, plus 0.5 % of the assets of the securitisation funds which it manages or for which it has delegated the management function.

Whatever the total under management, however, the minimum capital requirement shall not exceed EUR 760,000.

Whatever the total under management, however, the share capital can remain at EUR 225,000 in one of the following cases :

1° at least half the capital is held by one or more credit institutions or insurance companies having their registered office in a State party to the European Economic Area (EEA) agreement or in a third State provided such State is subject to prudential rules that the AMF deems equivalent to those applicable to credit institutions or insurance companies incorporated in States party to the EEA agreement ;

2° One or more of the persons mentioned in 1° shall stand jointly liable as guarantors for the acts of the management company, up to the minimum capital requirement.

#### **Article 321-6**

The share capital may consist of contributions in cash and, to a secondary extent, in kind.

Shares issued for cash or in-kind contributions shall be fully paid-in.

The capital shall be evidenced at all times by shares or other securities.

### **Paragraph 3 - Organisation**

#### **Article 321-7**

The management company shall give sufficient warranties as regards its organisation, its technical and human resources, and the fitness and properness of its senior managers ;

The management company shall have the independent capacity to implement the management strategies of the securitisation funds that it manages ;

The management company shall have permanent staffing and appropriate material resources for the intended management strategies so that it can continue to perform its work ;

However, to perform its work, the management company may :

1° use staff and equipment of outside organisations, seconded to it on a contractual basis by a person or an entity in the same corporate group or by a shareholder with at least 20 % of the capital, provided such resources are assigned to its activity on a lasting basis ;

2° delegate financial management of the securitisation funds in accordance with Articles 321-10 to 321-12 ;

3° rely on external service providers to perform some of its administrative, accounting and other ancillary functions, provided it has the resources to assume responsibility for overseeing their performance.

The management company shall verify that the secondment agreement stipulates, *inter alia*, the job duties of the staff members concerned, the existence of an exclusive reporting relationship to the senior managers of the company for performance of the duties specified in the contract, and the terms and conditions on which costs relating to seconded staff are borne by the company.

The senior managers of the management company shall undertake to comply with conduct of business rules and to ensure that persons working under their responsibility comply with and enforce these rules.

#### **Article 321-8**

The management company shall *seek to* prevent conflicts of interests and, if any arise, resolve them fairly in the interests of the unitholders of the securitisation funds. If the company finds itself in a conflict-of-interest situation, it shall inform the unitholders in the most appropriate way.

The company shall take all necessary measures to ensure the independence of the portfolio management function, notably by segregating lines of business and job duties.

#### **Article 321-9**

I. - In accordance with Article R. 214-108 of the Monetary and Financial Code, where a management company uses derivative financial instruments to manage securitisation funds, as set forth in Articles R. 214-104 and R. 214-105 of the Code or disposes of debt claims as provided for in points 5° and 6° of Article R. 214-107 of the Code, it shall have appropriate management systems and an organisational structure to control the risks arising from its management strategies and the commitments of the securitisation funds.

II. - Where the management company makes passive use of derivative financial instruments to manage securitisation funds, i. e. where the terms of the contracts on such instruments are defined when the fund is formed and cannot be amended before they are settled, and where the company does not dispose of debt claims within the meaning of points 5° and 6° of Article R. 214-107 of the Monetary and Financial Code, the management systems and organisational structure mentioned in paragraph I shall make it possible to :

1° identify financial risks ;

2° manage the legal risks related to the derivative financial instruments used.

III. - Where the management company makes active use of derivative financial instruments to manage securitisation funds, i. e. it can take and change positions by means of contracts on such instruments during the life of the fund, or where it disposes of debt claims within the meaning of points 5° and 6° of Article R. 214-107 of the Monetary and Financial Code, the management systems and organisational structure mentioned in paragraph I shall be compliant with II and shall make it possible to :

1° manage the intended management strategies ;

2° enable a unit independent of the commercial and operational units to perform a risk assessment and submit it to the board of directors of the management company every six months at least ;

3° monitor continuously the maximum net loss to the fund arising from all contracts constituting derivative financial instruments on credit risk, including hedging contracts. Maximum loss means the total net loss that could result from such contracts. The maximum loss may not exceed the value of the assets defined in Article R. 214-93 of the Monetary and Financial Code. The management company shall measure its assets at their likely realisable value or any other value consistent with the nature of the securitisation fund's commitments.

#### **Article 321-10**

I. - The management company may delegate all or part of the financial management function for one or more of its securitisation funds to :

1° another securitisation fund management company authorised by the AMF, provided this company has the resources appropriate to the type of management envisaged ;

2° a portfolio management company that has received AMF approval for a programme of operations specific to credit derivatives ;

3° a credit institution authorised in France for asset management ;

4° a French-based branch of a credit institution having its registered office in a State party to the EEA agreement, on condition that the branch is authorised for asset management ;

5° a person referred to in point 1° of Article R. 214-97 of the Monetary and Financial Code that is authorised or approved for that activity under the standards of the State in which its registered office is located ;

6° a person approved by, or having been granted a delegation from, a public authority for the management of portfolios or collective investment schemes.

The delegatee shall abide by the conduct of business rules applicable to securitisation fund management companies. The delegatee may not subdelegate the management of a fund that it has been entrusted to manage.

II. - In all cases, the delegation shall not create possible conflicts of interest. In particular, should the circumstances require, the delegatee shall comply with Article 315-17.

The management company shall remain responsible for the activities it delegates.

#### **Article 321-11**

Where the management company delegates the financial management of a securitisation fund, the delegatee shall have an organisational structure that complies with Article 321-9 and shall abide by the conduct of business rules and other professional obligations mentioned in sub-section 2 of this section.

The delegation shall not prevent the AMF from properly overseeing the delegating management company.

The delegating management company shall send the AMF a declaration to the effect that the delegatee is authorised to carry on an asset management business. Absent an agreement on mutual recognition or on the exchange of confidential information between the AMF and the authority that issued the delegatee's authorisation, the delegation agreement shall contain a clause agreeing to an audit by or on behalf of the AMF, without the authorisation of the management company.

If need be, the delegation authorisation application can be suspended pending receipt of information from the delegatee's authorising authority.

#### **Article 321-12**

Where it does not meet the organisational requirements set forth in Article 321-9, the delegating management company shall put in place a programme for supervising the delegatee. The programme shall include :

1° a description of the management strategy of the fund for which the management function has been delegated ;

2° the standard agreement for delegating financial management. This agreement shall include the following information *inter alia* :

a) the investment criteria adopted, and in particular the level of the selected risk and return indicators and the admissible or prohibited strategies ;

b) the scope of the delegation ;

c) the quantitative and qualitative resources available to the delegatee ;

d) the method of remunerating the delegatee ;

e) the ways in which the delegatee will inform the delegating company about the fund management activity ;

f) the procedures for supervising the delegating company ;

g) the term of the agreement and the conditions in which it can be cancelled. The agreement shall be cancelled in such a way as to permit the delegated activity to continue ;

h) the governing law ;

3° the arrangements for supervising the delegated management function and the controls carried out within the delegating company to ensure compliance with the delegation agreement, with details about the technical resources used and the persons in charge of monitoring and supervising the delegation.

### **Paragraph 4 - Supervision, cessation of activity and revocation of authorisation**

#### **Article 321-13**

The AMF conducts documentary audits and on-site inspections to monitor compliance with the representations and commitments made in the authorisation application.



**Article 321-14**

Management of a securitisation fund cannot be transferred from one management company to another without the approval of the AMF.

**Article 321-15**

The AMF shall be informed if the management company permanently ceases operations.

**Article 321-16**

Before the authorisation referred to in Article L. 214-47 of the Monetary and Financial Code is revoked, the management company is asked to explain itself or is given formal notice to remedy the situation at issue.

The AMF shall inform the management company and the custodians concerned of its decision by letter, stating the grounds for such decision.

If the authorisation is revoked, the management company may not pursue its activities, other than those needed to ensure continuity of day-to-day management of the securitisation fund for which it is responsible, until such activities are transferred to another fund management company, as provided for in the last paragraph of this Article.

Within two months after authorisation has been revoked, the custodian(s) of the securitisation funds shall choose one or more management companies that accept(s) to continue managing the funds.

**Article 321-17**

The transfer of management functions subsequent to a revocation of authorisation, or in the case referred to in Article 321-14, shall be disclosed to the public in accordance with Article 421-12.

**SUB-SECTION 2 - CONDUCT OF BUSINESS RULES AND OTHER PROFESSIONAL OBLIGATIONS****Article 321-18**

Within six months of the end of its financial year, the management company shall send the AMF its audited annual financial statements, the management report on those statements and, where such is the case, the report of the statutory auditors.

**Paragraph 1 - Management autonomy****Article 321-19**

The management company shall act in the interests of the unitholders of the securitisation funds which it manages or for which it has delegated the management function. To this end, it shall conduct its activities in conformity with the principles of market integrity, transparency and security.

The nature and the frequency of transactions made in connection with the management of the fund shall be motivated solely by the interests of the unitholders and shall be brought to their attention.

The management company shall refrain from taking any action intended to favour its own interests, or those of its partners, shareholders or cooperative members, to the detriment of the interests of unitholders.

Investments made for purposes of managing the company's capital shall not be such as to call into question its compliance with Article 331-5.

**Article 321-20**

The management company shall put in place resources and procedures to ensure that its delegates comply with the provisions of this sub-section.

The management company shall also ensure that any affiliates which act on behalf of a securitisation fund or as counterparty to a trade by that fund and which have not been selected according to the procedure set forth in Article 321-27, are in compliance with Articles 321-21 to 321-23 and Articles 321-27 to 321-35.

Within the meaning of this Article, an "affiliate" shall be deemed to be :

1° any company controlled exclusively or jointly by the securitisation fund management company within the meaning of Article L. 233-16 of the Commercial Code ;

2° any company that controls the securitisation fund management company exclusively or jointly within the meaning of Article L 233-16 *ibid* ;

3° any subsidiary of the same parent company and any company with which the management company shares corporate officers or senior managers.

#### **Article 321-21**

The management company shall ensure that holders of units or debt securities carrying identical rights are treated equally.

#### **Article 321-22**

The choice of investments and intermediaries shall be made independently in the interests of holders. In particular, except in the cases provided for in the second paragraph of Article 321-20 and Article 321-27, such choice may not depend on :

1° control, within the meaning of Article L. 233-3 of the Commercial Code ;

2° agreements that would block or would restrict the management company's ability to implement the procedures provided for in Articles 321-27 to 321-29.

#### **Article 321-23**

The management company shall ensure that the rights attaching to the securities held by a securitisation fund under its management are exercised in the interests of holders, namely the right to attend general meetings, to exercise voting rights and the right to go to court.

#### **Article 321-24**

The arrangements for compensating the management company shall not be such as to create a conflict of interests between the company and the holders.

### **Paragraph 2 - Management resources and organisation**

#### **Article 321-25**

The management company shall be organised in such a way that it conducts its activities fairly, diligently, neutrally and impartially, for the exclusive benefit of holders and having regard for market integrity and transparency.

#### **Article 321-26**

The management company shall adopt an organisational structure that reduces the risks of conflicts of interest. Functions likely to cause conflicts of interest shall be strictly segregated.

The company shall keep the business of managing securitisation funds separate from its asset management business.

#### **Article 321-27**

The management company shall implement a formal, auditable procedure for selecting and evaluating intermediaries and counterparties, taking into account objective criteria such as cost of intermediation and quality of execution, research and trade administration.

It shall discuss the implementation of this procedure in the fund's management report.

Whenever the counterparty or intermediary is not selected in accordance with the principles of the first paragraph of this article, the compensation of that counterparty or intermediary may not increase the costs borne by the fund.

#### **Article 321-28**

For order placement, the management company shall :

1° implement a formal placing procedure that allows orders to be traced. This procedure is subject to the system for monitoring transactions and internal procedures referred to in Article 313-63 ;

2° ensure it has the necessary means, *inter alia*, to process order flows and obtain access to information and markets ;

3° implement an order time-stamping procedure, and ensure also that intermediaries and custodians have implemented a time-stamping procedure ;

4° take steps to shorten total order-execution time as much as possible, from the initial recording of orders to their recognition in the accounting system ;

5° send precise order allocation instructions to the custodian of the securitisation fund once it is aware that the order has been executed, at the latest ;

6° establish order allocation rules beforehand for aggregated orders ;

7° refrain from reallocating completed transactions ex post.

For investments in securities not traded on the regulated markets referred to in Article L. 422-1 of the Monetary and Financial Code or on regularly operating regulated markets of a State that is neither a member of the European Community nor party to the EEA agreement, provided such markets have not been ruled ineligible by the AMF, the management company shall implement suitable procedures that are specific to the securities concerned.

#### **Article 321-29**

The management company may not effect transactions between its own account and a securitisation fund under its management.

Nor may it effect transactions directly between securitisation funds under its management where such transactions involve the assets of these funds.

#### **Article 321-30**

The management company shall ensure that the disposal agreement(s) or the management and servicing agreement(s) enable it to fulfil its disclosure requirements.

### **Paragraph 3 - Obligations relating to anti-money laundering and combating the financing of terrorism**

#### **Article 321-31**

All the activities of fund management companies shall be subject to the provisions of this paragraph.

#### **Article 321-32**

For the purposes of this paragraph,

1° "equivalent foreign institution" means :

a) a foreign institution that, under the law of its country of registration, is authorised to engage in the banking or banking-related transactions referred to in Articles L. 311-1 and L. 311-2 of the Monetary and Financial Code and is based in a state whose laws are recognised as adequate and whose practices are considered to be consistent with the provisions against money laundering and terrorist financing of the international body for concertation and coordination of the prevention of money laundering ;

b) a subsidiary or branch of a foreign institution as defined in a) above, or a foreign subsidiary of the portfolio management company that meets the following two criteria :

- Its registered office is not located in, or the subsidiary or branch office does not operate in, states or territories whose legislation is recognised as being inadequate, or whose practices are considered a hindrance to combating the laundering of capital and the financing of terrorism, by the international body for concertation and coordination of the fight against money laundering ;
- It has taken measures to prevent money laundering and combat terrorist financing, as specified in Article L. 563-3 of the Monetary and Financial Code.

2° "marketer" means any person or entity that places units of securitisation funds with investors.

#### **Article 321-33**

The management company shall exercise constant vigilance and shall have an appropriate organisational structure and internal procedures to comply with Title VI of Book V of the Monetary and Financial Code and its implementing regulations. It shall adopt written internal rules describing the procedures to be followed and the steps to be taken in order to, *inter alia* :

1° identify and verify the identity of the investor and the beneficial owner before entering into a contractual relationship ;

2° examine any unusually complex transaction that appears to have no economic justification ;

3° report suspicions concerning amounts or transactions as required by Article L. 562-2 of the Monetary and Financial Code to the authority stipulated in Article L. 562-4 of the same Code ;

4° keep written records of the due diligence measures it has put in place.

#### **Article 321-34**

The methods and procedures for the measures described in the internal rules referred to in Article 321-33 shall be appropriate to the service provided, to the means of providing it, to the nature of the proposed transaction, to the nature and corporate form of the investor, to the status of the investor and, where applicable, to the status of persons acting for their own account or on behalf of others, as well as to the way in which the service is marketed ; in particular :

1° when the portfolio management company receives subscription orders directly from an investor for units or debt securities of a securitisation fund, it shall perform the verifications required under Title VI of Book V of the Monetary and Financial Code and its implementing regulations ;

2° when the management company has no direct relationship with the investor and has entrusted the marketing of the fund to a third party that is a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or an equivalent foreign institution, the management company shall obtain conclusive written evidence of the identity and status of that institution and the existence therein of procedures to prevent money laundering and combat terrorist financing. The management company shall perform the verifications called for in Title VI of Book V of the Monetary and Financial Code and its implementing regulations on subscription and redemption orders received from the third party ;

3° where the management company has no direct relationship with the investor and has entrusted the marketing of the fund to a third party that is not a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or an equivalent foreign institution, but whose registered office is not located in a state or territory whose legislation is recognised as being inadequate, or whose practices are considered a hindrance to combating the laundering of capital and the financing of terrorism, by the international body for concertation and coordination of the fight against money laundering, the management company shall obtain conclusive written evidence of the identity and status of that institution and the existence therein of procedures to prevent money laundering and combat terrorist financing.

The management company shall enter into an agreement with the third party under which the third party is bound to :

- a) perform investor due diligence, pursuant to the law of the party's own country, in accordance with the recommendations of the international body for concertation and coordination of the fight against money laundering ;
- b) meet any additional obligations to prevent money laundering and combat terrorist financing that the management company may request after conducting its own due diligence.

The third party shall undertake to produce, at the management company's request, all items that the company requires in order to check that the procedures and verifications implemented by the third party are in conformity with its contractual obligations under the aforementioned agreement.

The management company shall perform the verifications called for in Title VI of Book V of the Monetary and Financial Code and its implementing regulations on subscription and redemption orders received from the third party ;

4° when the management company has no direct relationship with the investor and has entrusted the marketing of the fund to a third party that is not a financial institution within the meaning of Article L. 562-1 of the Monetary and Financial Code or an equivalent foreign institution, and whose registered office is located in a state or territory whose legislation is recognised as being inadequate, or whose practices are considered a hindrance to combating the laundering of capital and the financing of terrorism, by the international body for concertation and coordination of the fight against money laundering, the third party shall undertake to send the management company all the information it needs to perform the due diligence called for in Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

In every case, the management company is responsible for compliance with the obligations resulting from Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

#### **Article 321-35**

Where a third party is the keeper of the securitisation fund's issuer account or the custody account of the fund's liabilities, or where it centralises subscription orders for units or debt securities of the fund, the management company shall enter into an agreement with this third party calling for it to implement due diligence measures relating to prevention of money laundering and terrorist financing, but only after the management company has verified the identity and status of the third party and ascertained that it is a financial institution within the meaning of Article L.

562-1 of the Monetary and Financial Code or an equivalent foreign institution. If the management company entrusts one or more of these functions to a third party without such status, the third party shall undertake to provide the management company with all the information that the company requires to perform the due diligence called for in Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

#### **Article 321-36**

Pursuant to Articles L. 563-1 and L. 563-1-1 of the Monetary and Financial Code and its implementing regulations, the internal rules referred to in Article 321-33 shall describe the procedures and measures to be implemented regarding identification of the investor or the third party that receives subscription requests, in particular verification of that person's identity and financial situation before any units or debt securities of the securitisation fund are subscribed for.

Information gathered on the identity and financial situation of the investor or the third party receiving subscription requests shall be kept up to date.

The management company shall pay particular attention to the identity of persons resident in states or territories whose legislation is recognised as being inadequate, or whose practices are considered a hindrance to combating the laundering of capital and the financing of terrorism, by the international body for concertation and coordination of the fight against money laundering.

#### **Article 321-37**

The internal rules shall describe how the management company ensures that its foreign branches or subsidiaries meet the obligations to prevent money laundering and combat terrorist financing set forth in Article L. 563-3 of the Monetary and Financial Code, unless local law bars them from doing so, in which case the management company so informs the body established under Article L. 562-4 of the Monetary and Financial Code.

The management company shall adopt procedures enabling it to meet the provisions of Title VI of Book V of the Monetary and Financial Code and its implementing regulations when the company applies its management strategy.

#### **Article 321-38**

The management company shall implement a monitoring system to verify compliance with legal and regulatory requirements relating to the prevention of money laundering and terrorist financing.

#### **Article 321-39**

I. - When the management company implements its investment policy or management strategy by acquiring debt claims, it shall perform the verifications required by the provisions of Title VI of Book V of the Monetary and Financial Code and its implementing regulations as regards the party disposing of the claims.

The management company may enter into an agreement with a third party having the status of a financial institution or equivalent foreign institution under which the third party, under the responsibility of the management company, is charged with applying all the due diligence measures required by Title VI of Book V of the Monetary and Financial Code and its implementing regulations as regards the party disposing of the claims.

The third party shall undertake to produce, at the management company's request, all items that the company requires in order to check that the procedures and verifications implemented by the third party are in conformity with its contractual obligations under the aforementioned agreement.

II. - Where the management company implements its investment policy or management strategy for the securitisation fund by entering into contracts constituting derivative financial instruments, it shall assess the risk of money laundering and terrorist financing entailed by such instruments.

In particular, it shall identify any financial instrument issued by entities acting in the form or on behalf of trust funds or other instruments for administering special purpose funds, of which the identity of the settlors or beneficiaries is unknown.

If, in accordance with Articles 321-10 to 321-12, management of a securitisation fund is delegated, the delegation agreement shall provide that the delegatee is bound to apply the due diligence measures specified in the two preceding paragraphs.

#### **Article 321-40**

The management company shall adopt staff recruitment procedures enabling it to meet the provisions of Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

At the time of hiring, and regularly thereafter, its staff shall be given information on and training in the obligations relating to the prevention of money laundering and terrorist financing, in particular on applicable regulations and rule

amendments, on money laundering techniques, on prevention and detection measures, and on the methods and procedures referred to in Article 321-34.

Persons acting on behalf of the management company shall be made aware of the measures to be taken to ensure compliance with Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

When staff members are seconded, the secondment agreement shall stipulate how the aforementioned obligations are to be met.

## **Section 2 - Management companies of real estate investment companies**

### **SOUS-SECTION 1 - AUTHORISATIONS**

#### **Paragraph 1 - Procedure**

##### **Article 321-41**

Authorisation of a management company, which is provided for in Article L. 214-67 of the Monetary and Financial Code, shall be subject to prior filing of an application with the AMF containing the elements stipulated in an AMF instruction ;

In the light of this filing and the criteria set forth in Article L. 214-68 of the Monetary and Financial Code, the AMF assesses the organisation and technical and human resources of the management company, the skill, fitness and properness of its senior managers, and the provisions for ensuring transaction security.

The AMF may require the applicant to supply any additional information that it needs to take a decision.

The management company may not conduct any business until the AMF authorises it to do so.

##### **Article 321-42**

After authorisation has been issued, the management company informs the AMF immediately of any changes affecting the key elements of its initial filing.

The AMF assesses whether the changes could affect the issued authorisation.

#### **Paragraph 2 - Organisation**

##### **Article 321-43**

The management company must give sufficient warranties as regards its organisation, its technical and human resources, and the skill, fitness and properness of its senior managers. It must act solely in the interest of investors and must not engage in any activity that could lead to a conflict of interest.

#### **Paragraph 3 - Delegation of powers**

##### **Article 321-44**

Delegations that have been given are referred to in the documents submitted to the AMF.

1° The following responsibilities may not be delegated :

- a) Setting objectives for inflows, the terms and conditions for capital increases, and the terms and conditions for marketing the units ;
- b) Selecting property assets for investment and divestment ;
- c) Determining the amount of interim dividends ;
- d) Setting the issue price for units and establishing the execution price ;
- e) Taking decisions on building work, except for routine property management work.

2° The following responsibilities may be delegated solely to management companies of real estate investment companies :

- a) Handling legal and administrative aspects of capital increases ;
- b) Preparing news bulletins for partners ;

- c) Preparing the annual report ;
- d) Determining the tax assessment base for partners (tax balance sheet) ;
- e) Deciding to undertake maintenance work ;
- f) Managing free cash ;
- g) Monitoring receipts and dealing with disputes, if any.

#### **Paragraph 4 - Supervision and revocation of authorisation**

##### **Article 321-45**

The AMF conducts documentary audits and on-site inspections to monitor compliance with the commitments made in the authorisation application.

##### **Article 321-46**

Before the authorisation referred to in Article L. 214-47 of the Monetary and Financial Code is revoked, the management company is asked to explain itself or is given formal notice to remedy the situation at issue.

The AMF shall inform the management company of its decision by letter, stating the grounds for such decision.

If authorisation is revoked, the management company may not pursue its activities, other than those necessary to ensure continuity of day-to-day management of the real estate investment companies for which it is responsible, until such activities are transferred to another management company, as provided in this Article.

The revocation of authorisation of a management company of a real estate investment company takes effect two months after notification thereof.

Where authorisation is revoked, a general meeting is called at each of the real estate investment companies concerned within two months of the revocation decision in order to choose another management company.

#### **SUB-SECTION 2 - CONDUCT OF BUSINESS RULES AND OTHER PROFESSIONAL OBLIGATIONS**

##### **Article 321-47**

Within six months of the end of its financial year, the management company must send the AMF a copy of its annual financial statements and management report.

##### **Article 331-48**

The management company must have an organisational structure and procedures to meet the vigilance and reporting requirements for the prevention of money laundering and terrorist financing, as set forth in Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

### **Section 3 - Management companies of forestry investment companies**

#### **SUB-SECTION 1 - AUTHORISATION**

##### **Paragraph 1 - Authorisation**

##### **Article 321-49**

Authorisation of a management company, which is provided for in Article L. 214-67 of the Monetary and Financial Code, shall be subject to prior filing of an application with the AMF containing the elements stipulated in an AMF instruction.

In the light of this filing and the criteria set forth in Article L. 214-68 of the Monetary and Financial Code, the AMF assesses the organisation and technical and human resources of the management company, the skill, fitness and properness of its senior managers, and the provisions for ensuring transaction security.

The AMF may ask the applicant to supply any additional information that it needs to take a decision.

The management company may not conduct any business until the AMF authorises it to do so.

**Article 321-50**

Before issuing such authorisation, the AMF seeks the opinion of the Centre National Professionnel de la Propriété Forestière.

**Article 321-51**

After authorisation has been issued, the management company informs the AMF immediately of any changes affecting the key elements of its initial filing.

The AMF assesses whether the changes could affect the issued authorisation.

**Paragraph 2 - Organisation****Article 321-52**

The management company must give sufficient warranties as regards its organisation, its technical and human resources, and the skill, fitness and properness of its senior managers.

It must act solely in the interest of investors and must not engage in any activity that could lead to a conflict of interest.

**Paragraph 3 - Delegation of powers****Article 321-53**

I. - Delegations that have been given are referred to in the documents submitted to the AMF.

The following responsibilities may not be delegated :

1° Setting objectives for inflows, the terms and conditions for capital increases, and the terms and conditions for marketing the units ;

2° Selecting forestry assets for investment, divestment or exchange, such assets being held directly or in the form of ownership units of forest cooperatives or companies formed for the sole purpose of holding woodlands and forests ;

3° Determining the investment strategy for cash or equivalent assets ;

4° Determining management policies and presenting basic management plans, or amendments thereto, for approval by regional forest property centres ;

5° Determining the amount of dividends ;

6° Setting the issue price for units and establishing the execution price ;

7° Taking decisions concerning logging and other work not falling within the scope of approved basic forest management plans.

II. - The following responsibilities may be delegated solely to management companies of forestry investment companies :

1° Handling the legal and administrative aspects of capital increases ;

2° Preparing news bulletins for partners ;

3° Preparing the annual information report for partners ;

4° Determining the tax assessment basis for partners (tax balance sheet) ;

5° Validating the yearly programme of logging and other work falling within the scope of the basic forest management plans ;

6° Monitoring receipts and handling disputes, if any ;

7° Monitoring logging and other work and sales of wood.

III. - Investment management of cash and equivalent assets may be delegated solely to management companies of forestry investment company or to portfolio management companies.



#### **Paragraph 4 - Supervision and revocation of authorisation**

##### **Article 321-54**

The AMF may at any time conduct documentary audits and on-site inspections to monitor compliance with the commitments made in the authorisation application.

##### **Article 321-55**

Before authorisation is revoked, the management company of a forestry investment company is asked to explain itself or is given formal notice to remedy the situation at issue.

The AMF informs the management company of its decision by letter, stating the grounds for such decision.

If authorisation is revoked, the management company may not pursue its activities, other than those necessary to ensure continuity of day-to-day management of the forestry investment companies for which it is responsible, until such activities are transferred to another management company, as provided in this Article.

The revocation of authorisation of a management company of a forestry investment company takes effect two months after notification thereof.

Where authorisation is revoked, a general meeting is called at each of the forestry investment companies concerned within two months of the revocation decision in order to choose another management company.

#### **SUB-SECTION 2 - CONDUCT OF BUSINESS RULES AND OTHER PROFESSIONAL OBLIGATIONS**

##### **Article 321-56**

A forestry investment company may not place more than 10 % of its liquid assets in the interest-bearing notes (*bons de caisse*) and debt securities of any single issuer.

##### **Article 321-57**

The management company must have an organisational structure and procedures to meet the vigilance and reporting requirements for the prevention of money laundering and terrorist financing, as set forth in Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

### **CHAPTER II - CUSTODY ACCOUNT-KEEPERS**

#### **Single section - Rules of conduct and other professional obligations : performance requirements of custody account-keepers**

##### **SUB-SECTION 1 - GENERAL PROVISIONS**

#### **Paragraph 1 - Obligations relating to the fight against money laundering and financing of terrorism**

##### **Article 322-1**

A custody account-keeper must have an organisational structure and procedures to meet the vigilance and reporting requirements for the prevention of money laundering and terrorist financing, as set forth in Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

#### **Paragraph 2 - Relations with customers**

##### **Article 322-2**

The operating principles for customer accounts in financial instruments are set forth in the agreement between the custody account-keeper and the account holder.

This agreement identifies the respective rights and obligations of the parties. It specifies the manner in which the account-holder is provided with statements showing the nature and number of financial instruments held in the account.

**Article 322-3**

Before a financial instrument account is opened in the name of a natural person, the custody account-keeper verifies that person's identity as well as, if applicable, the identity of the person on whose behalf the customer is acting.

The authorised provider verifies that the customer has the requisite capacity and authority to open such account.

If the customer is a legal person, the provider verifies that the representative of the said legal person is duly empowered to act, either by virtue of being a legal representative of the customer or under a mandate or delegation of powers to the representative. To this end, the provider requests the production of any documents enabling it to verify that the said representative has been duly empowered.

The custody account-keeper may require natural and legal persons subject to the law of another State to present an affidavit of foreign law attesting that the contemplated transactions are lawful under the legislation of that State.

The financial instrument account must mention the items of identification provided by the persons in whose name it is opened and any special provisions or situations affecting the exercise of their rights.

**Article 322-4**

The custody account-keeper must in all circumstances meet the following obligations :

1° The custody account-keeper does its utmost to safeguard the financial instruments in its custody and, to this end, ensures that all financial instruments and movements affecting them are booked in strict accordance with applicable rules and procedures. The custody account-keeper also does its utmost to facilitate the exercise of rights attached to financial instruments in its custody.

2° The custody account-keeper may not make any use of the financial instruments and attached rights in its custody, nor transfer title thereto, without the express consent of the holder. The custody account-keeper organises its internal procedures to ensure that any movement affecting the financial instruments it holds in custody on behalf of third parties is justified by a properly recorded transaction in a third-party account.

3° The custody account-keeper has an obligation to return any financial instruments held in book entry form on its books.

If such instruments exist only in book-entry form, the custody account-keeper responsible for making those entries transfers the instruments to the custody account-keeper that the account holder designates. Such transfer is carried out as quickly as possible provided the account holder has fulfilled his own obligations.

Subject to the accounting provisions set forth in Article 322-17, the custody account-keeper ensures that the assets of its customers, including those of any collective investment scheme for which it is custodian, are segregated from its own assets on the books of any central securities depositories of which it is a member.

When the custody account-keeper uses the services of an agent, as provided for in Article 322-39, it ensures that the same segregation is made on the books of the agent.

Administered registered financial instruments shall be held in book entry form with the issuer in the name of the owner, in accordance with the information provided by the custody account-keeper that administers the instruments.

**Article 322-5**

The custody account-keeper must inform each holder of a financial instrument account as quickly as possible of :

1° Corporate actions requiring a response from the holder ;

2° Items needed for preparing the account holder's tax return ;

3° Events affecting the account holder's rights in respect of the financial instruments in custody, whenever the account-keeper has reason to believe the account holder is unaware of them ;

4° Executed trades or other movements in the financial instruments or cash held in the account holder's name.

However, when the account holder is enrolled in a retirement savings plan and has elected to have certain transactions made repeatedly and systematically on his account, the custody account-keeper may inform the holder of the execution of those transactions once every six months.

The custody account-keeper issues to any account holder that so requests an attestation specifying the nature and number of financial instruments held in the holder's account as well as any particulars thereon. A statement of this kind is sent periodically, at least once a year.

**Article 322-6**

The custody account-keeper ensures that, barring any legal or regulatory provision to the contrary, any movement of financial instruments affecting the account of an account holder is carried out only on the instruction of that account holder, his representative, or, in certain cases such as inheritances, an authorised third party.

If the holder has entrusted the management of his portfolio to an agent under an investment mandate, the custody account-keeper obtains an attestation signed by both the account holder and the agent, drawn up in accordance with a model specified in an AMF instruction.

Any transaction or event creating new rights or altering the existing rights of an account holder gives rise to a record entry as soon as such rights arise or are modified.

When the transaction consists of a movement of cash or rights and a corresponding movement of financial instruments, both movements are booked at the same time.

**Article 322-7**

The provisions of Articles 516-1 to 516-14 apply to custody account-keepers.

**Paragraph 3 - Resources and procedures****Article 322-8**

The custody account-keeper must have resources and procedures that comply with the requirements of this Section. These requirements relate to matters such as human resources, information systems, accounting, customer protection and the compliance and internal control system.

The custody account-keeper must at all times be able to show that these requirements are being met.

**Sub-paragraph 1 - Human resources****Article 322-9**

A description of the various functions and job positions is drawn up, specifying the skills and qualifications needed for each function or position.

A detailed organisation chart of the custody account-keeping departments is drawn up. It is accompanied by a document describing the role and responsibilities of each of the units identified on the chart.

The custody account-keeper ensures that staff assigned to manage the information system have the skills called for by the quality standards of the information technology (IT) profession.

**Article 322-10**

An annual training plan is established for staff. It must be suited to their training needs and to the specific function of custody account-keeping of financial instruments.

Pursuant to this plan, all means of training required for proper conduct of the custody account-keeping activities are implemented and evaluated on a regular basis.

**Article 322-11**

The custody account-keeper acquires adequate human resources to respond to changes in the capital markets and the technological environment as well as to a durable or temporary increase in the volume of business.

**Sub-paragraph 2 - Information system resources****Article 322-12**

The custody account-keeper has an information processing system suited to its size, its specific characteristics and the volume of transactions that it processes. It has the hardware and software needed to provide the requisite level of performance and security.

**Article 322-13**

The custody account-keeper has a list of the persons allowed access to its information systems and ensures that all such access is monitored.

All instances of access to the custody account-keeper's information systems are logged, and a record is kept of the changes to data processing routines resulting from each access.

**Article 322-14**

The general architecture of the information processing system used for custody account-keeping activities is documented. A list of hardware and software used in the system is drawn up and kept up to date.

**Article 322-15**

The custody account-keeper checks the quality of information processing on a regular basis. Such quality assessment is based on the criteria specified in the contracts or service agreements between the users and the IT live-production unit. Indicators are developed to measure and monitor the frequency of information processing incidents.

**Article 322-16**

Both physical and logical security is ensured for all information processing and data exchange systems.

In particular, the custody account-keeper ensures that data centres are physically protected and that access to the information processing systems is rigorously monitored using the means referred to in Article 322-13. A back-up plan is drawn up and appropriate procedures are put in place to ensure business continuity.

***Sub-paragraph 3 - Accounting procedures*****Article 322-17**

The custody account-keeper describes its accounting organisation in an appropriate document.

For the purpose of ascertaining and monitoring the rights of account holders, financial instrument accounts are kept according to the rules of double-entry book-keeping.

The terminology of these accounts and the operating rules applicable to them are specified in an AMF instruction. For purposes of control, this terminology classifies financial instruments belonging to collective investment schemes, to other clients and to the custody account-keeper itself into distinct categories.

**Article 322-18**

An ordinary individual financial instrument account shall not be in debit on the settlement date of any instrument sold therefrom.

The custody account-keeper shall establish procedures to :

- 1° identify any trade or disposal that could lead to a debit balance on the financial instrument account at the settlement date ;
- 2° preventing the occurrence of such debit balance.

**Article 322-19**

Transactions are recorded on the books of account as soon as the custody account-keeper has knowledge of them.

**Article 322-20**

When transactions remain to be confirmed between the custody account-keeper and its counterparties, the corresponding commitments are recorded in off-book entries if they do not give rise to entries on the books of account.

**Article 322-21**

The accounting department provides all information needed to manage the settlement of transactions.

**Article 322-22**

Every book entry is justified either by

- 1° a written document, or by
- 2° unalterable electronic data.

**Article 322-23**

In respect of holders of accounts in administered registered financial instruments, the authorised intermediary serving as custody account-keeper is at all times able to show that the book entries for such holdings correspond exactly to those on the books of the issuing entity.

A daily record is kept of changes in registered owner that have not been transmitted to the central depository within the required time limit and are still to be transmitted.

**Article 322-24**

Processing procedures are organised in such a way as to ensure complete entry, reliability and safeguarding of basic data, in particular data relating to account holders, financial instruments held in custody, counterparties and corporate actions and events affecting such instruments.

**Article 322-25**

The processing system is able to produce the following documents for each of the financial instruments held in custody :

- 1° record of movements in the financial instruments ;
- 2° record of financial instrument accounts opened under all classes of the chart of accounts.

These records are retained for the period required by applicable regulations.

**Article 322-26**

Data relating to customers and the transactions they make is treated and safeguarded in accordance with the obligation of professional secrecy set forth in Article 314-1.

**Article 322-27**

The custody account-keeper establishes an audit trail linking the cash and securities entries corresponding to a given transaction, by means of either common references or rules of administration.

**Article 322-28**

The accounting system for financial instruments is designed to provide evidence of the overall balance in each financial instrument on the basis of the balances in each holder's account and the balances on transactions in progress (balance audit trail) and to allow reconstruction of each balance from the detailed transactions that gave rise to it (book entry audit trail).

Such justifications may be performed on a daily basis.

**Article 322-29**

The accounting system for financial instruments is organised to enable verification of the accuracy of the processing procedures.

For each financial instrument, the following are checked daily :

- 1° Equality between the total of all credit entries to accounts and the total of all debit entries ;
- 2° Balance between accounts with credit balances and accounts with debit balances.

The accounting system for financial instruments is also organised to enable verification of the data by means of appropriate procedures.

**Article 322-30**

The accounting system for financial instruments implements procedures for ongoing verification of the accuracy of available asset account balances, with the aid of documentation of the corresponding assets provided by the central depository, the custody account-keepers having custody of the financial instruments, and the legal persons that issued them by means of a public offer of securities. Any discrepancy is substantiated.

**Article 322-31**

The date on which receipt or delivery of financial instruments is normally expected is recorded. The recorded date takes into account the specific characteristics of cross-border transactions.

For all of the financial instruments concerned, a report on net fails in financial instruments and in cash is provided daily to the department with operating responsibility for counterparty payment and settlement transactions.

For the purposes of this Article, net fails include :

1° Transactions that have not been agreed within the scheduled time period.

2° Pending deliveries and payments relating to transactions that have been "agreed" with the counterparties but have not been completed within the scheduled time period.

The report on net fails is broken down by counterparty, and each line of the report shows the originally scheduled settlement date.

Confirmation by the counterparties of identified net fails in financial instruments or in cash is sought on a regular basis.

***Sub-paragraph 4 - Customer services and investor protection*****Article 322-32**

Delivery of financial instruments subsequent to a transaction made by an authorised service provider for its own account, whether or not in relation to transactions made by its customers, is subject to systematic checking of availability from the service provider's own account so that no use is made of financial instruments recorded in the name of third parties. If sufficient financial instruments are not available in that account, the custody account-keeper must resort to borrowing the instruments in question.

**Article 322-33**

Whenever the custody account-keeper resorts to borrowing financial instruments as provided for in Article 322-32, it ensures that the financial instruments in question are received not later than the day on which those instruments are to be withdrawn from the available asset account for the purpose of making the delivery mentioned in that Article.

When the borrowed financial instruments are to be returned, the custody account-keeper ensures that it holds a sufficient quantity of financial instruments in its own account before doing so.

**Article 322-34**

Any movement of financial instruments in custody that is not completed within the time limits set by the market rules or the rules of payment and settlement systems is detected immediately by the information system and brought to the attention of the relevant department in order to bring the situation into compliance with requirements.

**Article 322-35**

Where an expected delivery of financial instruments is not received by the scheduled date, the custody account-keeper contacts the counterparty as soon as possible to claim the financial instruments in question.

Concomitantly, the missing quantity of financial instruments in custody is reconstituted either by borrowing or, if need be, by purchase, according to the terms and conditions set forth in the market rules or the rules of the payment and settlement system in question or according to the contract provisions agreed with the account holder.

**Article 322-36**

Whenever a customer is notified of the terms on which his stock market order has been executed, the notice shall include details of fees or commissions charged by the service providers involved including the account-keeper.

For transactions in foreign currencies, the price at which the foreign currency order was executed, the amount of fees charged in foreign currency, and the exchange rate at which the transaction was booked are indicated.

**Article 322-37**

The authorised provider entrusted with centralising payment of dividends reinvestable in shares ensures, in concert with the issuing entity, ensures that defined procedures for payment of coupons are in place when the operation begins and are communicated to those shareholders that :

1° Do not wish to reinvest in shares (indicate whether immediate payment is an option, as opposed to payment at a later date) ;

2° Have not sent in their response during the option period (official payment date).

Amounts corresponding to payments received by the service provider for the account of a customer, in particular dividends without a reinvestment option, interest on debt securities and repayments of principal, are credited to the customer's cash account as soon as the funds in question have become available to the custody account-keeper.

#### **Article 322-38**

The custody account-keeper transmits shareholders' requests for preparatory documents in advance of a general meeting to the issuer, or itself makes such documents available to the shareholders, provided that the issuer has met its contractual obligations in this regard to the custody account-keeper.

#### ***Sub-paragraph 5 - Relations with other service providers***

#### **Article 322-39**

The custody account-keeper may appoint another entity as its agent for performing all or part of the tasks related to its custodial activity. When the custody account-keeper appointing an agent is not an issuing entity, such agent must be another custody account-keeper.

A custodial agency agreement is drawn up between the two parties (principal and agent). This agency agreement specifies, *inter alia* :

1° The tasks entrusted to the agent ;

2° The respective responsibilities of the principal and the agent ;

3° The procedures to be implemented by the principal to ensure oversight of the operations carried out by the agent.

Where an agent is responsible for keeping the client accounts of the principal on an individual basis, that agent shall ensure that the principal is following the procedures established pursuant to the second sub-paragraph of Article 322-18. If the agent finds that these procedures have not been implemented, it shall not proceed with settlement.

However, if the agent is unable to prevent completion of settlement because of technical factors relating to the operation of the settlement system, it shall ensure that no financial instrument belonging to clients is used for such purpose without the express agreement of those clients as called for in point 2° of Article 322-4.

#### **Article 322-40**

The custody account-keeper may, simultaneously with a custodial agency agreement or independently of such agreement, engage a third party to provide it with technical resources.

#### **Article 322-41**

When the custody account-keeper appoints an agent or engages a third party as described in Articles 322-39 and 322-40, it conducts an assessment of the resources and procedures employed and the risks incurred. This assessment is available for review by the AMF.

The liability of the custody account-keeper to the holder of a financial-instrument account is not affected by the appointment of another custody account-keeper as agent or by the engagement of a third party to provide technical resources.

However, when a custody account-keeper holds financial instruments issued under foreign law in custody for the account of a qualified investor as defined by applicable law and regulations, the custody account-keeper may agree to share liability with that investor.

#### **Article 322-42**

Relations between the custody account-keeper and the service providers assuming the functions of broker-dealer or clearer for the same investor are governed by conventions or contracts that specify the obligations of each party, so that any disputes over settlement or adjustment of securities transactions can be resolved as efficiently as possible.

**Article 322-43**

Risks relating to the implementation of payment and settlement processes for financial instruments must be assessed.

**Article 322-44**

When, on the instruction of an account holder, the custody account-keeper is to transfer a portfolio of financial instruments to another custody account-keeper, under the terms set forth in point 3° of Article 322-4, it provides as quickly as possible to the new custody account-keeper all the information needed by the latter, in particular information relating to the precise identification of the account holders concerned and the figures needed to fill out tax returns.

**Article 322-45**

The security of financial instruments held in custody outside France, for the account of customers and through the medium of an agent as referred to in Article 322-39, is ensured by a signed agreement between the custody account-keeper and the agent. This agreement specifies or provides for, *inter alia* :

- 1° The terms and conditions under which account(s) will be kept in the name of the custody account-keeper on the books of the agent ;
- 2° The obligation of the agent to provide as quickly as possible all information relating to movements on the account(s) of the custody account-keeper, as well as periodic reports on the financial instruments on deposit ;
- 3° Implementation of the requirement mentioned in the seventh paragraph of Article 322-4 (segregation) ;
- 4° Observance of local practices.

***Sub-paragraph 6 - Control of the custody account-keeping activity*****Article 322-46**

The head of compliance shall ensure that the custody account-keeper complies with applicable regulations.

The head of compliance shall ensure the quality of procedures specific to custody account-keeping and the reliability of the tools used for monitoring and managing that activity.

The head of compliance shall have regularly updated documentation describing the departmental organisation, operating procedures and all risks incurred by carrying on the account-keeping activity.

The head of compliance shall be able to view the main internal management reports and shall be a recipient of anomaly reports and complaints lodged by customers or trade partners, in particular those relating to malfunctions and possible breaches of professional ethics.

**Article 322-47**

The head of compliance shall organise the control of the custody account-keeping activity so as to distinguish between :

- 1° Measures that ensure day-to-day control of operations ;
- 2° Measures that, by means of recurring or unannounced inspections and detailed audits of operating procedures, ensure the consistency and effectiveness of the operating controls.

**Article 322-48**

The head of compliance shall be associated with the validation of any new accounting framework and reviews the updating of the chart of accounts.

**Article 322-49**

The head of compliance shall ensure that there is ongoing monitoring of counterparty risks, both credit risks and transaction risks. He shall verify that secure relations with counterparties are underpinned if necessary by the signed conventions or contracts referred to in Article 322-42.

**Article 322-50**

The head of compliance shall establish rules for supervising positions deemed sensitive in regard to the continuity and integrity of processing or the confidentiality of transactions.



**Article 322-51**

The head of compliance shall ensure that procedures exist to guarantee that customer instructions are followed and that corporate actions in financial instruments are carried out properly as regards both timely execution and updating of financial-instrument and cash accounts.

**Article 322-52**

The head of compliance shall ensure the effectiveness of forward-looking procedures intended to manage flows in financial instruments and cash and thereby prevent net fails and violations of the requirements of point 2° of Article 322-4.

In the event that net fails nevertheless occur, the investment services supervisor monitors the status of such net fails and the time required to clear them.

***Sub-paragraph 7 - Provisions relating to sale and redemption of financial instruments*****Article 322-53**

The custody account-keeper shall see to it that the following provision is implemented: if any French shares sold are not credited to the seller's account on the order execution date, the seller shall be liable to the buyer for compensation equal to the amount of any dividends paid on the shares during the period from the order execution date to the settlement date.

**Article 322-54**

Service providers that hold, in the name of their customers, financial instruments issued by a French entity that are redeemable by random draw, must communicate to each depositor, before the drawing, the certificate, series, or tranche numbers of the instruments held in the depositor's account.

Service providers retain, in the name of each customer, copies of the statements called for in the preceding sentence and the notices informing the depositor that financial instruments held in the depositor's account have been redeemed by random draw.

**SUB-SECTION 2 - PROVISIONS GOVERNING DOMICILIATION OF NEGOTIABLE DEBT SECURITIES AND TREASURY BILLS****Article 322-55**

Before any issue of negotiable debt securities (*titres de créances négociables*), a written agreement is concluded between the issuer and a domiciling institution responsible for ensuring the regularity of the conditions of issue.

Authorised domiciling institutions are those indicated in the ministerial order implementing Decree 92-137 of 13 February 1992 and the implementing regulations therefor.

The domiciling institution is responsible for, *inter alia*, ensuring that the amount of the issue corresponds exactly to the instructions received from the issuer. It must report the characteristics of the issue to the issuer in the manner specified by the aforementioned agreement.

The domiciling institution acts as transfer and paying agent for the issue and must fulfil the requirements for statistical reporting to the Banque de France set forth in the aforementioned ministerial order and implementing regulations.

**Article 322-56**

When an issuer decides to have the issuance account for an issue of negotiable debt securities kept at a central depository, the issuer informs the central depository as to which domiciling institution the issuer has appointed to transmit its instructions. The central depository opens a separate account for each issue. The central depository is responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the custody account-keepers.

**Article 322-57**

When an issuer decides not to have the issuance account for an issue of negotiable debt securities kept at a central depository, its domiciling institution is responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the other custody account-keepers.

**Article 322-58**

Only the provisions set forth in Articles 322-55 and 322-56 apply to Treasury bills.

**SUB-SECTION 3 - PROVISIONS GOVERNING ADMINISTRATION OF REGISTERED FINANCIAL INSTRUMENTS****Paragraph 1 - General provisions****Article 322-59**

In accordance with point 1° of Article L. 542-1 of the Monetary and Financial Code, legal entities that issue financial instruments by means of a public offer are authorised to engage in the activity of custody account-keeping for those financial instruments.

The term "pure registered financial instrument" (instrument financier nominatif pur) means a registered financial instrument that the owner entrusts to be administered by the issuer.

The term "administered registered financial instrument" (instrument financier nominatif administré) means a registered financial instrument that the owner entrusts to be administered by the custody account-keeper. The custody account-keeper shall recognise the assets corresponding to the financial instruments held in book entry form with the issuer in an administration account as provided in Article R. 211-4 of the Monetary and Financial Code.

**Article 322-60**

When a holder of registered financial instruments elects to entrust the administration of those instruments to an authorised intermediary, as allowed by Article 4 of Decree 83-359 of 2 May 1983, the holder enters into an agency agreement with the intermediary that conforms to a model specified in an AMF instruction. The authorised intermediary notifies the issuer of such agency agreement.

When an agency agreement for administration by an authorised intermediary is terminated, that intermediary duly informs the issuer of such termination.

**Article 322-61**

Issuing entities keep separate books of account for each class of securities they have issued.

These books of account record pure registered financial instruments so as to distinguish them from administered registered financial instruments, as defined in Article 322-59.

A general ledger with entries made in chronological order records all transactions involving each class of financial instruments issued.

A general account opened for each issue under the heading "Issue of Registered Financial Instruments" records, on the debit side, all registered financial instruments issued by the issuer.

The corresponding credits appear in the individual accounts of holders of pure and administered registered financial instruments as well as the various accounts of registered financial instruments awaiting transfer.

**Article 322-62**

Recognition for the benefit of holders of rights detached from registered financial instruments is made exclusively by the custody account-keepers of administered registered financial instruments when the relevant instruments are of the administered registered type, and exclusively by the issuing entities when the relevant instruments are of the pure registered type.

Such rights are in "bearer" form if they arise from administered registered financial instruments and in "pure registered" form if they arise from pure registered financial instruments.

Regardless of the form in which they are recorded, such rights circulate in bearer form.

**Article 322-63**

The current accounts of issuers at the central depository for the issue record holdings of the issuer's instruments in the form of pure registered financial instruments.

The current accounts of authorised intermediaries at the central depository for the issue record separately the assets of holders of financial instruments held in bearer form and in administered registered form.

Current accounts at the central depository for the issue in financial instruments that exist exclusively in registered form, available only to investment service providers authorised to execute orders for third parties or to trade for their

own account, record movements in financial instruments resulting from transactions carried out by those intermediaries on a regulated market.

#### **Article 322-64**

In the event of a change in ownership of administered registered financial instruments, a change in mode of account administration, or any other change affecting an entry in the account of a holder of an administered registered financial instrument, each custody account-keeper concerned by such change prepares the registered instrument message in the holder's name mentioned in the first paragraph of Article L. 431-1 of the Monetary and Financial Code and, if applicable, proceeds with the agreed payment and delivery of financial instruments.

When a holder of registered financial instruments instructs a custody account-keeper to manage the account he has opened with an issuer whose financial instruments are admitted to the operations of a central depository, that issuer prepares a registered instrument message. When it keeps an administration account, the custody account-keeper alone is authorised to receive orders from the holder for the instrument in question ; accordingly, it draws up the registered instrument messages as specified in the preceding sentence.

A registered instrument message is evidenced by a set of computerized data, prepared in conformity with the standards set by an AMF instruction and intended for electronic transmission.

#### **Article 322-65**

In the event of a change in ownership of an administered registered financial instrument following execution of a stock market order from the holder, the custody account-keeper concerned sends the registered instrument message to the central depository not later than the second trading day following the order execution date. The central depository in turn sends the registered instrument message to the issuer not later than the following trading day, specifying the date on which it recorded the message.

Not later than the trading day following receipt of the registered instrument message, the issuer updates its accounting records. Not later than the second trading day following receipt of the registered instrument message, the issuer sends the message back to the central depository. The depository sends the registered instrument message to the intermediary concerned not later than the trading day after it received it.

The date of the movements recorded by the issuer in its accounts is the date specified by the central depository and mentioned in the first paragraph above.

#### **Article 322-66**

The custody account-keeper responsible for preparing a registered instrument message subsequent to a change in mode of administration of the account of a financial instrument holder sends the registered instrument message to the central depository not later than the second trading day following the date on which it recorded the change in the holder's account on its books. The central depository sends the registered instrument message to the custody account-keeper concerned not later than the trading day after it received it.

#### **Article 322-67**

Registered instrument messages circulate via central depositories.

The operating rules and implementing instructions of central depositories establish the technical standards that determine the data content of registered instrument messages and organise the circulation thereof.

#### **Article 322-68**

The operating rules establish the penalties to which custody account-keepers and issuers are subject if registered instrument messages are not prepared within the required time limits. The rules consequently specify the time limits and the amounts of the penalties for failing to meet them. Depending on the specific technical constraints associated with delivery and settlement procedures and future changes thereto, the rules may provide for time limits longer than those referred to in Article 332-65, up to the maximum time limits set in Articles 332-69 and 332-70.

#### **Article 322-69**

When there has been a change of holder of an administered registered financial instrument following execution of a stock market order by that holder, and the intermediary custody account-keeper concerned has received the order and transmitted it to a trader or executed the order itself, the time limit for the custody account-keeper to avoid the penalty may not exceed three trading days following the order execution date.

When there has been a change of holder of an administered registered financial instrument following execution of a stock market order by that holder, and the intermediary custody account-keeper concerned has provided neither

reception-transmission nor execution service for that order, the time limit for the custody account-keeper to avoid the penalty may not exceed three trading days following the theoretical date for closing the transaction on its books.

#### **Article 322-70**

For the issuing entity that receives the registered instrument message referred to in Article 322-64, the time limit for avoiding the penalty may not exceed three trading days following the record date mentioned in the first paragraph of Article 322-65.

#### **Article 322-71**

If a registered instrument message is rejected by an issuing entity and the intermediary custody account-keeper must send a corrected message, the time limit for the custody account-keeper to avoid the penalty for late sending of the corrected message may not exceed seven trading days following the record date of the rejection at the central depository.

#### **Article 322-72**

For any registered instrument message not referred to in Articles 322-65 and 322-66 for which the sending deadline is not dictated by the terms and conditions of a collective transaction in financial instruments, the time limit for the intermediary custody account-keeper to avoid the late sending penalty may not exceed three trading days following the date of the event giving rise to the message as indicated on the message itself.

The time limit for the issuing entity receiving the message to avoid the penalty may not exceed three trading days following the record date mentioned in the first paragraph of Article 322-65.

### **Paragraph 2 - Provisions of these performance requirements applicable to entities making public offers of financial instruments and recording such instruments in pure registered accounts**

#### **Article 322-73**

The line reporting relationship of the departments responsible for the custody account-keeping function is shown on the general organisation chart of an issuer of financial instruments offered to the public in pure registered form.

#### **Article 322-74**

In compliance with Article 322-18, procedures must be established to identify transactions that result in a debit balance in the account of a holder of pure registered financial instruments and could not be prevented prior to accounting treatment.

If the account of a holder of pure registered financial instruments shows a debit balance, a procedure to rectify the situation is implemented as soon as possible.

#### **Article 322-75**

Processing procedures are organised in such a way as to ensure the recording of registered instrument messages by name in chronological order as well as the complete entry, reliability and safeguarding of basic data, in particular data relating to account holders, financial instruments held, intermediaries and corporate actions affecting securities.

#### **Article 322-76**

In accordance with Article 322-26, data relating to holders of pure registered financial instruments and the transactions they make is treated and safeguarded in compliance with the obligation of professional secrecy set forth in applicable regulations.

#### **Article 322-77**

In accordance with Article 322-28, the accounting system for financial instruments is designed to provide justification of the overall balance in each financial instrument based on the balances of each holder of pure registered financial instruments and the balance of pending transactions (balance audit trail) and to allow reconstruction of each balance from the detailed transactions that gave rise to it (book entry audit trail). Such justifications may be done on a daily basis.

#### **Article 322-78**

A report of net fails at the custody account-keeper is provided monthly to the supervisor referred to in Article 322-84.

The net fails referred to in Article 322-31 are transactions rejected by the custody account-keeper and not rectified by the intermediaries. Such transactions include :

- 1° Trades in a financial instrument that is issuer-registered (*essentiellement nominative*) ;
- 2° Changes relating to the identity of the holder ;
- 3° Transfers, disposals, and corrections of account headings ;
- 4° Miscellaneous transactions in financial instruments ;
- 5° Portfolio transfers.

The report on net fails is broken down by counterparty, and each line of the report shows the accounting reference for the transaction.

All net fails are rectified as soon as possible.

If need be, the issuer/custody account-keeper and the intermediaries implement a bilateral reconciliation procedure in order to resolve net fails.

#### **Article 322-79**

Before making any entry on its books in the name of a new holder of pure registered financial instruments, the custody account-keeper :

- 1° Verifies the identity of the new holder ;
- 2° Ensures that the prospective holder is legally entitled and qualified to open the account ;
- 3° When the prospective holder is a legal person rather than a natural person, verifies that the representative of such legal person has the capacity to act on its behalf, either as its legal representative or under a delegation of authority or power of attorney ; to this effect, the custody account-keeper requests the production of any document enabling it to verify the authorization or designation of the representative.
- 4° Enters into an account opening agreement with the holder.

#### **Article 322-80**

The account opening agreement referred to in Article 322-2 specifies :

- 1° The identity of the holder of pure registered financial instruments ;
- 2° If a legal person, the means by which the custody account-keeper is kept informed of the name(s) of the person(s) authorised to act in the name of the said legal person ;
- 3° If a natural person, an indication of whether such person is a resident of France, a resident of another State party to the European Economic Area agreement, or a resident of a third country ; and, if applicable, the identity of any person(s) authorised to act in the name of the said natural person ;
- 4° If an order reception and transmission service is to be provided to the holder, the characteristics of orders that may be directed to the custody account-keeper ; the method by which orders will be received and transmitted ; the means by which the holder will be informed when transmission of the order could not be completed ; and upon execution of the order, the content of the notice to the holder and the means by which the notice will be sent ;
- 5° The means by which the holder will be informed of movements recorded in the holder's account.

#### **Article 322-81**

Whenever a stock market order is received from a holder of pure registered financial instruments, the custody account-keeper, before transmitting that order for execution on the market, verifies that the conditions necessary for executing it are effectively fulfilled. In particular, there must be :

- 1° For a purchase of securities, a sufficient cash balance or, failing that, sufficient overdraft cover ;
- 2° For a sale of securities, a sufficient balance of the securities to be sold.

#### **Article 322-82**

When, on the instruction of an account holder, the custody account-keeper is to transfer a portfolio of pure registered financial instruments to another custody account-keeper, under the conditions set forth in point 3° of Article 322-4, it provides to the new custody account-keeper as quickly as possible all the information needed by the latter, such as information relating to the precise identification of the account holders concerned and the figures required for tax returns, in particular information on the cost basis for tax purposes.

**Article 322-83**

Whenever an issuer has recourse to an agent, pursuant to Article 322-39, and decides to change agents, the issuer sees to it that the new agent makes arrangements with the agent it replaces for the effective transfer of archived records concerning the issuer.

**Article 322-84**

The custody account-keeper designates by name a person responsible for ensuring compliance with the rules governing the conduct of custody account-keeping and, if applicable, order reception and transmission service. This supervisor performs the functions provided for in Articles 322-46 to 322-52.

The role of the supervisor includes, *inter alia*, identifying the applicable rules mentioned in the preceding paragraph, compiling a collection of all these rules, disseminating these rules to the staff members involved, monitoring compliance with these rules, and providing assistance in these matters to staff members on an as-needed basis, independently of audit engagements.

The supervisor has appropriate autonomy of decision. The human and technical resources at the supervisor's disposal are sufficient to accomplish his mission and suited to the nature and volume of the activities conducted.

Each year the supervisor prepares a report containing a description of the supervisory organisation, a list of tasks carried out in performance of his mission, any observations he has seen fit to make, and a description of measures adopted to follow up on his remarks. This report is transmitted to the management of the custody account-keeper and to the executive body of the issuer.

The supervisor does everything necessary to establish and implement specific procedures and tools for monitoring and managing the custody account-keeping activity. He satisfies himself that these procedures and tools are effective and reliable.

The supervisor ensures that the departments in charge of processes related to financial instrument delivery receive on a timely basis all the information needed to complete the transactions properly. In the event of net fails, the investment services supervisor monitors the status of such transactions and the time needed to clear them.

**SUB-SECTION 4 - PROVISIONS RELATING TO CUSTODY ACCOUNT-KEEPING IN CONNECTION WITH  
AN EMPLOYEE SAVINGS SCHEME**

**Article 322-85**

This Sub-section concerns custody account-keeping for UCITS units or shares acquired in connection with an employee savings scheme. It also concerns other financial instruments acquired as part of such a scheme.

For the purposes of this Sub-section,

- 1° "Units" mean units or shares of UCITS offered as part of an employee savings scheme ;
- 2° "Funds" mean the UCITS whose units or shares are offered as part an employee savings scheme ;
- 3° "Holders" mean the beneficiaries of an employee savings scheme ;
- 4° "Management companies" mean portfolio management companies and open-end investment companies that have not delegated the management of their assets.

**Paragraph 1 - Account opening agreement**

**Article 322-86**

Before opening a financial instrument account for an employee savings scheme, the custody account-keeper verifies the identity of the employing entity (the "employer") and the validity of the power accorded to its representative.

The account opening agreement referred to in Article 322-2 is drawn up, subject to the provisions of the third paragraph, between the employer that has set up a savings scheme for its employees and other holders and the custody account-keeper specified in the savings plan or participation agreement.

Whenever, in connection with an employee savings scheme, the employer is itself an issuing entity that performs custody account-keeping and keeps accounts on holders of pure registered financial instruments, it is not required to enter into an account opening agreement with such holders or to have its agent enter into such an agreement.

**Article 322-87**

Before opening the individual accounts referred to in Article 322-89, the custody account-keeper asks the employer or the agent that maintains the employer's register of administrative rights (hereinafter the "registrar") to send it the list of beneficiaries of the employee savings scheme. Failing provision of such list, accounts are not opened.

**Article 322-88**

The account opening agreement stipulates :

1° The mode of transmission of deposit, redemption and transfer orders as well as orders to change investment choices, and the role of the custody account-keeper as regards order execution.

Orders are transmitted directly to the custody account-keeper when it is the employer's agent for receiving and checking the authenticity of orders, or via the employer's intermediary, in which case the intermediary is responsible for checking order authenticity.

2° The procedures for updating individual information on holders, including holders leaving the employer, and the processing associated with loss of employee status. The agreement provides that a holder who loses employee status remains covered by this agreement or by any other agreement that subsequently takes its place.

3° The role of the custody account-keeper in providing information to the employer and the holders and the manner in which such information is to be provided, without prejudice to the legal and regulatory provisions regarding the employer's responsibilities for disclosure to holders. Such information concerns the investment of savings plan assets and deposits, transactions in financial instruments, changes of custody account-keeper, individual transfers, changes of holders' asset allocations, and other individual transactions by holders.

The custody account-keeper, if it is not also the registrar, reaches agreement with the registrar on procedures for sending holders statements showing the nature and number of financial instruments held in their account, as required in Article R. 443-5 of the Labour Code and in Article 322-5.

4° The amount, frequency and means of payment of fees payable by the employer and the holder.

5° The extent of the custody account-keeper's right of use in regard to holders' personal records on file.

6° The existence of agreements governing the custody account-keeper's relations with the other parties concerned in the employee savings scheme, as provided for in Articles 322-91 to 322-93.

7° The time limits for redemptions by the holder, unless specified by regulation or fund by-laws.

8° The time limits for investment of amounts deposited for the account of holders. These time limits run from receipt of the information on fund allocation and the corresponding cash flow by the custody account-keeper.

**Paragraph 2 - Accounts****Article 322-89**

The account-keeper keeps an account of fund units in the name of each holder. As required by Article 322-3, this account indicates the items of identification supplied for the holder in whose name it was opened and any specific circumstances affecting the exercise of that holder's rights. These items of identification and specific indications are transmitted by the employer.

Two accounts kept in the name of the same holder may not be merged except upon formal request by the employer.

A holder's account may not be closed unless all of the assets held in it have been liquidated and no further rights are receivable.

The account-keeper also keeps "pending transaction" accounts for the purpose of receiving amounts paid in by the employer or holders and booking amounts payable to holders.

**Article 322-90**

When, pursuant to Article 322-40, a custody account-keeper engages a third party to provide technical resources, the custody account-keeper ensures that the third party implements the provisions of this Sub-section.

When the custody account-keeper engages a third party to make the accounting entries relating to holders, the custody account-keeper is not required to duplicate those entries in its own information system.

When, pursuant to Article 322-39, an open-end investment company (SICAV), acting as custody account-keeper, keeps accounts on holders of pure registered instruments and appoints an agent for this purpose, the investment company ensures that the agent implements the provisions of this Sub-section.

In accordance with Article 322-41 :

1° The custody account-keeper mentioned in the first paragraph does not shed its responsibilities towards the employer and the holders when a third party provides resources to it.

2° The investment company mentioned in the third paragraph does not shed its responsibilities towards the employer and the holders when it appoints an agent to perform custody account-keeping.

### **Paragraph 3 - Relations between the custody account-keeper and the other parties concerned in an employee savings scheme**

#### **Article 322-91**

The custody account-keeper enters into an agreement with the management company and the entity that keeps the account of fund units issued. This agreement stipulates the information exchanges that will permit or enable :

1° The management company to make investments or divestments in the funds ;

2° The custody account-keeper to record the number of units held by each employee, once the net asset values of the funds have been communicated to it by the management company ;

3° The entity keeping the unit issuance account to create or cancel units and, if necessary, reconcile the difference between the number of units transmitted by the custody account-keeper and the number indicated on its books.

#### **Article 322-92**

If the custody account-keeper is not the fund custodian, it enters into an agreement with the custodian stipulating the information exchanges that will enable :

1° The custody account-keeper and the fund custodian to organise flows of payments so as to comply with the settlement time limits specified in the account opening agreement or set by regulations or fund by-laws ;

2° The fund custodian to receive the information needed to perform its oversight role.

#### **Article 322-93**

When, in compliance with applicable regulations, the custody account-keeper is to make a transfer of units or cash held by a holder by or by all holders collectively to another custody account-keeper, it provides to the new custody account-keeper as quickly as possible, and not later than such transfer, all information needed by the latter, such as information relating to the precise identification of the account holders concerned and the figures required for tax returns, in particular information on the cost basis for tax purposes.

### **Paragraph 4 - Deposit and redemption transactions, changes to investment choices, and individual holder transfers**

#### ***Sub-paragraph 1 - Deposits***

#### **Article 322-94**

The custody account-keeper provides the bank routing and account numbers (*relevés d'identité bancaire*) of the "pending transaction" account(s) referred to in Article 322-89 to the employer and receives deposits to this (these) account(s).

Upon receipt of instructions for allocating the amounts deposited by holder and by fund, and after confirming receipt of the corresponding amounts in the pending transaction account concerned, the custody account-keeper debits that account and credits the fund accounts at the next net asset value date. It informs the management company that it has done so. At the same time, it calculates the number of individual units on the basis of the net asset value(s) provided by the management company of the fund(s) concerned and makes the corresponding accounting entries.

The custody account-keeper sends a summary of the subscriptions stated in cash values and units to the custodian, the management company and the entity keeping the unit issuance account.

It sends the transaction details to the holders and to the employer or its registrar.

#### **Article 322-95**

If the custody account-keeper has not received allocation instructions by holder and by fund for amounts deposited by the employer, it puts these amounts into the default fund for this purpose as specified by the savings plan or in



the participation agreement. The units thereby created ("units pending allocation") are held on behalf of holders by the custody account-keeper in a joint possession account.

Allocation of the units or cash to individual holders takes place only when the employer or its registrar sends the custody account-keeper the information needed for this purpose.

If no default fund is specified, the custody account-keeper keeps the amounts received in cash until it receives allocation instructions.

### ***Sub-paragraph 2 - Redemptions***

#### **Article 322-96**

When holders decide to make redemptions, the custody account-keeper :

- 1° Receives the redemption instructions after their authenticity has been verified by the employer or its registrar.
- 2° Determines, based on the net asset value provided by the management company for each fund, the amounts payable to the holders, or to any beneficiaries taking their place, and debits the holders' accounts by the corresponding numbers of units.
- 3° Sends a summary of the redemptions stated in cash values and units to the custodian, the management company and the entity keeping the unit issuance account.
- 4° Sends the transaction details to the holders and to the employer or its registrar.
- 5° Sends or issues instructions to send the corresponding payments to holders in settlement of their redemptions.

### ***Sub-paragraph 3 - Changes of investment choices***

#### **Article 322-97**

When holders change their investment choices, the custody account-keeper :

- 1° Receives holders' instructions to change their choice of investments, after those instructions have been authenticated by the employer or its registrar.
- 2° Carries out those instructions as a series of redemption and subscription orders, on the terms and conditions specified in the preceding three Articles and taking into account the specific rules and regulations concerning changes of holders' choices of investments under an employee savings scheme.
- 3° Sends the transaction details to the holders and to the employer or its registrar.

### ***Sub-paragraph 4 - Transfers***

#### **Article 322-98**

When holders make individual transfers, the custody account-keeper :

- 1° Receives holders' individual transfer instructions, after those instructions have been authenticated by the employer or its registrar.
- 2° If necessary, determines the amounts to be transferred, based on the net asset value provided by the management company.
- 3° Sends a summary of the transfers to the custodian, the management company and the entity keeping the unit issuance account, stating the amounts in cash and in units and the overall balance of units in each fund held by the holders.
- 4° Sends the new custody account-keeper all the information that it needs and at the same time transfers the assets concerned to the new custody account-keeper.
- 5° Sends the transaction details to the holders and to the employer or its registrar.

## Paragraph 5 - Accounting procedures

### Article 322-99

By exception to the provisions of Article 322-17, the custody account-keeper for financial instruments acquired in connection with an employee savings scheme may choose not to keep beneficiaries' accounts according to the principle of double-entry book-keeping, provided it has a specific control procedure that offers equivalent security.

### Article 322-100

The justifications mentioned in the first paragraph of Article 322-28 must be capable of being performed upon each valuation of the fund.

At the request of the entity keeping the unit issuance account, the custody account-keeper participates in the process of reconciling the number of units that it holds and the number of units shown in the unit issuance account.

### Article 322-101

As part of the control procedures required in Article 322-29, the custody account-keeper verifies, for each fund and upon each valuation :

1° The data on the number of units : the balance of credit and debit transactions on holders' accounts must be equal to the corresponding total number of units recorded for the fund.

2° The data on the amounts debited or credited : the balance of amounts received from and paid to holders must be equal to the balance on the pending transaction accounts and to the total of the corresponding deposits or withdrawals on the account of each fund.

3° The correspondence between the amounts to be credited or debited to a fund account and the number of units created or cancelled.

### Article 322-102

The net fails referred to in Article 322-31 mean the following transactions, when not completed within normal time limits :

1° Deposits received and to be allocated to a fund ;

2° Payments to holders ;

3° Various operations at the level of the fund (e.g. merger) ;

4° Account transfers ;

5° Reconciliation of the difference between the number of units transmitted by the custody account-keeper to the entity keeping the unit issuance account and the number shown in that account.

If necessary for the resolution of net fails, the custody account-keeper implements a reconciliation procedure with the various parties concerned (the employer, the management company, the entity keeping the unit issuance account, the registrar, etc.).

## CHAPTER III - DEPOSITARIES OF COLLECTIVE INVESTMENT SCHEMES

*(Decree of 18 April 2007, entry into force on 1 January 2008)*

### Section 1 - Duties of the depositary of for a collective investment scheme

#### Article 323-1

Under the terms of Articles L. 214-16, L. 214-26, L. 214-48 and L. 214-118 of the Monetary and Financial Code, the depositary shall have custody of the assets of the collective investment scheme and make sure that the scheme's decisions comply with applicable laws and regulations.

The provisions of this section shall apply to financial instruments issued under French law or the law of another country.

#### Article 323-2

The safekeeping duties of the depositary with regard to the assets of a collective investment scheme shall include :

1° Keeping the custody account for the financial instruments referred to in 1° and 3°, in I of Article L. 211-1 the Monetary and Financial Code, except for pure registered financial instruments ;

2° Registering in a position-keeping book the assets of the collective investment scheme other than the financial instruments referred to in 1° and pure registered financial instruments.

If the depositary administers registered financial instruments issued under the laws of another country and included in the assets of the collective investment scheme, custody shall be provided under the terms applying to the administered registered financial instruments referred to in Article 322-4 and hereafter.

The depositary shall open one or more cash accounts in its books in the name of the collective investment scheme to record and centralise the scheme's cash transactions, as well as one or more securities accounts and any other accounts necessary for the custody of the assets of the collective investment scheme.

#### **Article 323-3**

The custody account for the financial instruments included in the assets of the collective investment scheme shall be governed by the provisions of Chapter II of this Title.

#### **Article 323-4**

Position keeping consists in establishing a register of open positions in the assets referred to in 2° of Article 323-3. This register shall identify the characteristics of the assets and record their movements to ensure traceability.

#### **Article 323-5**

Under the terms of Articles L. 214-16, L. 214-26, L. 214-48 et L. 214-118 du Monetary and Financial Code, the depositary shall ensure compliance with the statutory and regulatory provisions applying to the collective investment scheme under the terms referred to in Articles 323-18 to 323-22.

Supervision shall be carried out ex post and shall exclude any discretionary review (contrôle d'opportunité).

## **Section 2 - Organisational structures and resources of the depositary**

### **SUB-SECTION 1 - PERFORMANCE SPECIFICATIONS FOR DEPOSITARIES**

#### **Article 323-6**

The depositary shall draft a set of performance specifications that describes the conditions under which it carries on its business. These specifications shall be made available to the AMF.

#### **Article 323-7**

The depositary shall all times have at adequate human and material resources, compliance and internal control systems, and organisational structures and procedures to conduct its business.

#### **Article 323-8**

The depositary shall designate a person to take charge of the depositary function. It shall notify the AMF of the identity of this person.

#### **Article 323-9**

The depositary of a collective investment scheme shall conduct its business diligently, honestly and fairly, respecting the primacy of interest of the scheme, its unit holders or shareholders, and market integrity. The depositary shall make every effort to avoid conflicts of interest and, when such conflicts cannot be avoided, shall see to it that all their clients are treated fairly.

#### **Article 323-10**

The depositary's statutory auditor shall conduct a special annual audit of the accounts opened by the depositary for the collective investment schemes.

Within seven weeks of the end of collective investment scheme's financial year, the depositary shall certify :

1° The assets for which it keeps a custody account.

2° The positions in other assets listed in the inventory, which it shall produce and retain in accordance with Article 323-2.

The depositary shall transmit this certification to the management company in accordance with the procedures referred to in 8° of Article 323-11. This annual certification shall serve as the periodic statement of account mentioned in the last paragraph of Article 322-5.

## **SUB-SECTION 2 - RELATIONS BETWEEN THE DEPOSITARY AND THE COLLECTIVE INVESTMENT SCHEME**

### **Article 323-11**

The depositary shall draw up a written agreement with the collective investment scheme that includes at least the following clauses :

- 1° The identity of the parties and the name(s) of the person(s) empowered to act in the name and on behalf of the collective investment scheme ;
- 2° The clauses pertaining to :
  - a) All the services provided and the categories of financial instrument to which they pertain ;
  - b) The prices of the services supplied by the investment services provider ;
  - c) The period of application of the agreement ;
  - d) The confidentiality obligations applicable to the parties in accordance with prevailing laws and regulations on professional secrecy ;
- 3° If the depositary does not effect the clearing of derivative financial instruments :
  - a) Identity of the institution designated to effect the clearing of derivative financial instruments ;
  - b) The procedures for transmitting instructions to the depositary about hedging transactions, margin call procedures and initial margin deposits with the clearing institution ;
- 4° Information relating to the obligations on anti-money laundering and combating the financing of terrorism ;
- 5° Where applicable, the use that the depositary may make of the financial instruments that it has in custody, after obtaining the explicit assent of the portfolio management company ;
- 6° The procedures for transmitting information and the nature of information that enables the depositary to maintain custody of the assets, to control the inventory of the scheme, to verify that decisions comply with applicable laws and regulations and to ensure the security of the collective investment scheme's transactions ;
- 7° The procedures for transmitting instructions between the collective investment scheme and the depositary ;
- 8° The procedures for disclosing the inventory of assets, and in particular :
  - a) The procedures for providing the depositary with a detailed inventory that can be used to identify all the scheme's assets, and with a priced inventory ;
  - b) The procedures for providing the management company with the inventory derived from the depositary's asset safekeeping operations, as referred to in Article 323-10.
- 9° The list of data that the depositary must give to the portfolio management company in order to complete its tax returns.

Where applicable, the agreement shall stipulate the procedures for sub-custody of the collective investment scheme's assets if the depositary uses an agent in accordance with Articles 322-39 to 322-45 and Article 323-13.

The agreement shall also stipulate a minimum three-month notice period for termination of the agreement. However, it may stipulate that the notice period can be shortened by mutual agreement between the parties at the time of termination.

Where the collective investment scheme holds the assets referred to in Point 2° of I of Article L. 214-118 of the Monetary and Financial Code, the agreement shall also provide explicitly that the depositary is entitled to control the items transmitted to it under Article 323-19, by means of documentary audits or on-site inspections at the portfolio management company or its service providers.

### **Article 323-12**

On the day that termination takes effect or the agreement referred to in Article 323-11 expires, the former depositary shall transfer all data and information relating to the custody of the assets to the new depositary.

The former depositary shall provide the portfolio management company and the new depositary with the inventory referred to in Article 323-10.

**SUB-SECTION 3 - RELATIONS BETWEEN THE DEPOSITARY AND OTHER SERVICE PROVIDERS****Article 323-13**

If the depositary does not effect the clearing of derivative financial instruments, it shall sign a written agreement with the institution that provides this service.

This agreement shall specify the obligations of the depositary and the clearing institution, as well as the procedures for transmitting information so as to enable the depositary to register the positions in the financial instruments and the cash positions concerned in a position-keeping book.

This agreement shall stipulate :

- 1° This list of financial instruments and markets in which the clearing institutions operates ;
- 2° The list of data about the positions recorded on the accounts that the collective investment scheme holds with the clearing institution. The latter institution shall send the list to the depositary ;
- 3° Where applicable, the transfer of full ownership of the cash and financial instruments to the keeper of the clearing account.

**Article 323-14**

The depositary may use one or more agents to carry out all or some of the duties related to its custody of the collective investment scheme's assets. This agent shall be a person authorised to provide administration and custody of financial instruments under the terms of Article L. 542-1 of the Monetary and Financial Code.

If the depositary delegates custody of the collective investment scheme's assets, it shall draw up an agreement that specifies the scope of the delegated tasks, along with the procedures and resources established to ensure supervision of the transactions carried out by the agent.

Each agent shall provide the depositary with an annual certification from its statutory auditor regarding the audit of the accounts held in its books for the collective investment scheme .

The fact that the depositary names a third party to maintain custody of the collective investment scheme's assets shall not affect the depositary's liability.

**Article 323-15**

The depositary may not delegate the task of supervising the legal and regulatory compliance of decisions made by the collective investment scheme.

**Section 3 - Procedures for custody of certain assets by the collective investment scheme's depositary****SUB-SECTION 1 - PROCEDURES FOR KEEPING POSITIONS IN DERIVATIVE FINANCIAL INSTRUMENTS****Article 323-16**

Acting on instructions from the portfolio management company, the depositary shall execute transfers of the cash and the financial instruments needed to constitute initial margin and respond to margin calls. It shall notify the portfolio management company of any problems encountered at this time.

These instructions shall be transmitted to the depositary in accordance with the procedures and intervals defined in the agreement referred to in Article 323-11.

As soon as it becomes aware of them, the portfolio management company shall send the following to the depositary :

- 1° Information about the characteristics of a new framework agreement signed on derivative financial instruments or amendments to an existing framework agreement ;
- 2° Copies of the signed trade confirmation slips or trade confirmations with regard to derivative financial instruments, which identify the transactions and their specific characteristics ;
- 3° The list of framework agreements with regard to derivative financial instruments at intervals to be defined in the agreement referred to in Article 323-11. Where applicable, the list shall indicate amendments made to the characteristics of the framework agreements. The depositary may ask for copies of the framework agreements and any further information required for the performance of its tasks.

At intervals to be defined in the agreement referred to in Article 323-11, the depositary shall send the portfolio management company a statement with the list of derivative financial instruments held by the collective investment scheme, along with the list of security provided, indicating security involving transfers of full ownership.

#### **SUB-SECTION 2 - CUSTODY PROCEDURES FOR PURE REGISTERED FINANCIAL INSTRUMENTS AND DEPOSITS**

##### **Article 323-17**

Acting on the instructions of the portfolio management company, the depositary shall make the cash payments related to transactions in pure registered financial instruments and deposits. It shall notify the portfolio management company of any problems encountered at this time.

The portfolio management company's instructions shall be transmitted to the depositary in accordance with the procedures and intervals defined in the agreement referred to in Article 323-11.

As soon as it has knowledge of them, the portfolio management company shall send the following to the depositary :

- 1° Documents evidencing the purchase and sale of registered financial instruments ;
- 2° Documents related to any deposits made at another institution ;
- 3° Documents that provide the depositary with information about the characteristics and events affecting pure registered financial instruments and deposits, such as certifications by the issuer, which shall be transmitted to the depositary in accordance with the procedures stipulated in the agreement referred to in Article 323-11.

#### **Section 4 - Procedures for supervising the legal and regulatory compliance of the decisions made by the collective investment scheme or its management company**

##### **Article 323-18**

The collective investment scheme's depositary shall put in place a monitoring and contact procedure that enables it to :

1° Familiarise itself with and assess the organisational structure and internal procedures of the collective investment scheme and its management company, having regard to its duties. This assessment shall also consider factors relating to the delegation of financial functions and the delegation of administrative and accounting functions. The management company shall make available to the depositary the information necessary for this periodic review on-site or off-site. For this purpose, the depositary shall ensure that the management company has suitable and auditable procedures to verify :

- a) The maximum number of holders for collective investment schemes limited to twenty holders at most ;
  - b) Dissemination of regulatory disclosures to holders by the management company ;
  - c) The criteria relating to the eligibility of the subscribers and purchasers, if the depositary does not verify their eligibility directly in accordance with Articles 413-7 and 413-18
- 2° Familiarise itself with the collective investment scheme's accounting system ;
- 3° Ensure compliance with the procedures for sharing information with the management company stipulated in the agreement referred to in Article 323-11.

The information referred to in 1°, 2° and 3° shall be updated at the intervals stipulated in the supervision plan referred to in Article 323-19.

##### **Article 323-19**

For the purposes of Article 323-5, the depositary shall establish and implement a supervision plan. The plan shall define the object, nature and frequency of supervision for this purpose.

Supervision shall focus on the following :

- 1° Compliance with investment and asset structure rules ;
- 2° The minimum asset amount ;
- 3° The frequency of valuation of the collective investment scheme ;
- 4° The rules and procedures for determining the net asset value ;
- 5° Substantiation of the contents of the collective investment scheme's suspense accounts ;

6° Information that is specific to certain types of collective investment schemes, such as the tracking error of index funds ;

7° In connection with controlling the inventory of the assets referred to in Point 2° of I of Article L. 214-118 of the Monetary and Financial Code, the existence of such assets. For the depositary, controlling the existence of these assets shall consist in identifying the assets and ascertaining the existence of an instrument confirming that they belong to the scheme ;

8° The statement of reconciliation with the inventory transmitted by the management company. The management company shall take an inventory of the scheme's assets, as specified in Articles L. 214-8, L. 214-48 and L. 214-106 of the Monetary and Financial Code, at least once every six months under the supervision of the depositary.

The characteristics of the supervision plan shall take account of the information gathered during the initial contact with the collective investment scheme or the management company. The plan shall be updated at intervals suited to the characteristics of the activity engaged in and be made available to the AMF.

The supervision plan, audit reports and reports on problems revealed shall be kept for five years.

The depositary shall have access to all of the collective investment scheme's accounting information at all times. It shall also have access at all times to all the detailed accounting and non-accounting information pertaining to the assets referred to in Point 2° of I of Article L. 214-118 of the Monetary and Financial Code. The manner and means of transmitting this information shall be provided for in the agreement referred to in Article 323-11.

#### **Article 323-20**

The management company shall notify the depositary of any changes regarding the collective investment scheme in accordance with the procedures and time limits stipulated in the agreement referred to in Article 323-11.

The management company shall obtain the consent of the depositary before applying to the AMF for authorisations.

#### **Article 323-21**

The collective investment scheme's depositary shall establish an alert procedure for problems revealed by its supervision. This procedure shall be appropriate to the nature of the problems revealed and shall require notification of the managers of the management company, followed by notification of the entities responsible for supervising and monitoring the collective investment scheme.

#### **Article 323-22**

The depositary shall ensure that the terms of the winding up of the collective investment scheme comply with the provisions of the collective investment scheme's rules or articles of association.

## **CHAPTER IV - CLEARERS**

### **CHAPITRE V - FINANCIAL INVESTMENT ADVISERS**

#### **Section 1 - Professional entrance requirements**

##### **Article 325-1**

Before commencing business, a financial investment adviser shall demonstrate that it has one of the following :

1° a national first-level degree in legal or economic studies, or another degree or credential of the same level ;

2° relevant professional training in carrying out the transactions mentioned in I of Article L. 541-1 of the Monetary and Financial Code ;

3° at least two years' professional experience in positions related to the conduct of transactions in the categories specified in I of Article L. 541-1 of the Monetary and Financial Code, gained during the five years before commencing business.

##### **Article 325-2**

For the purposes of this Chapter, each financial investment adviser shall belong to only one of the associations authorised by the AMF to represent and defend the rights and interests of financial investment advisers.

## Section 2 - Conduct of business rules

### Article 325-3

When establishing a relationship with a new client, the financial investment adviser shall give the client a document including the following references :

- 1° his status as a financial investment adviser and the registration number assigned to him by the professional association to which he belongs ;
- 2° the name of the professional association to which he belongs ;
- 3° where applicable, his status as a direct marketer, his registration number, and the name(s) of the principal(s) for which he acts in this capacity ;
- 4° where applicable, the name(s) of any institution(s) promoting products mentioned in point 1° of Article L. 341-3 of the Monetary and Financial Code in which he has a material ownership or commercial interest ;
- 5° where applicable, any other regulated status that he holds.

### Article 325-4

Before offering investment advice, the financial investment adviser shall submit a letter of engagement to the client. This letter shall be drawn up in duplicate and signed by both parties.

The letter of engagement shall be drawn up in accordance with a standard agreement drafted by the association to which the financial investment adviser belongs and shall contain, *inter alia*, the following indications :

- 1° acknowledgment by the client that he has received and read the document mentioned in Article 325-3 ;
- 2° the nature of and arrangements for the service to be provided, the description of which is suited to the client's status as an individual or legal entity and to his principal characteristics and motivations ;
- 3° the means by which information is to be given to the client, specifying the special arrangements for reporting on the advisory activity and for updating the information mentioned in points 3° and 4° of Article 325-3 whenever the relationship is expected to be a lasting one ;
- 4° the terms and conditions of remuneration of the financial investment adviser, specifying the calculation of the fees charged for the advisory service and, where applicable, the existence of any remuneration received from institutions mentioned in point 4° of Article 325-3 in respect of products acquired pursuant to advice given by the adviser.

A signed copy of the letter of engagement shall be remitted to the client.

### Article 325-5

All information, including advertisements, sent by a financial investment adviser shall be fair, clear and not misleading.

### Article 325-6

A financial investment adviser is regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of advice to such client, he pays or is paid any fee a commission, or provides or is provided with any of the following non-monetary benefits:

- 1° a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client;
- 2° a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:
  - a) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the advisory service. The financial investment adviser is permitted to disclose the essential terms of the agreements relating to the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the client and provided that it honours that undertaking;
  - b) Payment of the fee or commission, or provision of the non-monetary benefit, is intended to enhance the quality of the advisory service to the client and does not impair compliance with the financial investment adviser's duty to act in the best interests of the client.



**Article 325-7**

Advice to the client shall be formalised in a written report giving reasons for the adviser's proposals and stating the attendant advantages and risks.

The adviser's proposals shall be predicated on :

- 1° an assessment of the client's financial situation and experience in financial matters ;
- 2° the client's investment objectives.

These two items shall be set forth in the report in a detailed manner appropriate to the client's status as an individual or legal entity.

**Article 325-8**

The financial investment adviser shall have resources and written procedures to enable him to prevent, manage and deal with any conflicts of interest that might harm the interests of his client.

**Article 325-9**

Except with the express agreement of the client, the financial investment adviser shall refrain from disclosing and using for his own benefit or the benefit of another, outside the scope of its engagement, the client-related information that he holds in his professional capacity.

**Section 3 - Organisational rules****Article 325-10**

The financial investment adviser must at all times have resources and procedures appropriate to the conduct of his business, in particular :

- 1° sufficient technical resources ;
- 2° secure data storage facilities.

**Article 325-11**

Where a financial investment adviser employs several persons especially for his advisory activity, he shall adopt an organisational structure and written procedures that enable him to conduct his business in compliance with applicable laws, regulations and ethical provisions.

**Article 325-12**

I. - The financial investment adviser shall exercise constant vigilance and shall have an appropriate organisational structure and internal procedures to comply with Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

Where he employs several persons especially for his advisory activity, he shall adopt written internal rules describing the procedures mentioned in the preceding paragraph and the steps to be taken in order to, *inter alia* :

- 1° identify and verify the identity of the investor and the beneficial owner before entering into a contractual relationship ;
- 2° examine any unusually complex transaction that appears to have no economic justification ;
- 3° report suspicions concerning amounts or transactions as required by Article L. 562-2 of the Monetary and Financial Code to the authority laid down in Article L. 562-4 of the said Code ;
- 4° keep written records of the due diligence measures it has put in place.

II. - The financial investment adviser shall appoint a person responsible for monitoring compliance with legal and regulatory requirements relating to the prevention of money laundering. This person shall be responsible, *inter alia*, for the functions mentioned in Articles R. 562-1 and R. 562-2 of the Monetary and Financial Code.

III. - The financial investment adviser shall adopt staff recruitment procedures that enable him to meet the provisions of Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

At the time of hiring, and regularly thereafter, his staff shall be given information on and training in the obligations relating to the prevention of money laundering and terrorist financing, in particular on applicable regulations and rule

amendments, on money laundering techniques, on prevention and detection measures, and on the implementation methods and procedures referred to in I above.

Persons acting on behalf of the financial investment adviser shall be made aware of the measures to be taken to ensure compliance with Title VI of Book V of the Monetary and Financial Code and its implementing regulations.

#### **Section 4 - Reception and transmission of units or shares in collective investment schemes**

##### **Article 325-13**

The financial investment adviser may agree to receive for transmission purposes an order for one or more units or shares in a collective investment scheme that a client to whom it has provided an advisory service intends to subscribe for or sell.

Prior to providing such service, the financial investment adviser shall enter into an agreement with its client, setting forth the rights and obligations of both parties.

The financial investment adviser must be able to prove that the order originates from its client. It shall keep a record of the time-stamping of the reception and transmission of the client's order.

#### **Section 5 - Authorisation of representative associations**

##### **SUB-SECTION 1 - AUTHORISATION REQUIREMENT**

##### **Article 325-14**

The association shall have its registered office in France, and its principal purpose shall be the collective representation and defence of the rights and interests of financial investment advisers.

##### **Article 325-15**

The legal representatives of the association shall meet the fitness and properness criteria relevant to their functions.

##### **Article 325-16**

The association shall draw up a code of conduct setting forth the professional rules defined in Articles 325-3 to 325-12 as well as the rules for monitoring and oversight of the training programmes called for Article 325-19.

This code shall be submitted for approval by the AMF as professional rules.

##### **Article 325-17**

The association shall establish written admission and disciplinary procedures for its members who are financial investment advisers.

The association shall also establish written procedures to monitor members' compliance with applicable laws, regulations and ethical rules.

##### **Article 325-18**

The association shall have the staff and technical resources needed to carry out its mission on an ongoing basis.

Its technical resources shall include, *inter alia* :

1° an information processing tool enabling it to update the list of financial investment advisers and transmit it to the AMF ;

2° a data storage facility for the retention of documents, in particular control reports, for five years.

##### **Article 325-19**

The association shall seek to ensure that its members' knowledge is kept current by selecting or organising training programmes.

##### **Article 325-20**

The association shall be independent of institutions promoting products mentioned in point 1° of Article L. 341-3 of the Monetary and Financial Code.

## SUB-SECTION 2 - AUTHORISATION PROCEDURE

### Article 325-21

Authorisation of a representative association within the meaning of Article L. 541-4 of the Monetary and Financial Code shall be subject to prior filing of an application with the AMF containing :

- 1° the articles (*statuts*) of the association ;
- 2° the name, curriculum vitae and an extract from the judicial record (*casier judiciaire*) or equivalent document for each of the association's legal representatives ;
- 3° a three-year projected budget for the association ;
- 4° a draft code of conduct ;
- 5° the standard letter of engagement for use by members of the association ;
- 6° a description of the human and technical resources that will enable the association to meet its obligations under this Chapter.

### Article 325-22

In deciding whether to issue authorisation to an association, the AMF shall review the application to assess whether the applicant, based on its filing, fulfils the conditions set forth in Articles 325-14 to 325-20. The AMF may ask the applicant to provide any further information it considers necessary to reach its decision.

## SUB-SECTION 3 - REPORTING TO THE AMF

### Article 325-23

Within six months of the end of the financial year, the association shall send the AMF copies of its balance sheet, income statement and activity report for the year, describing, *inter alia*, the verifications it carried out and the records thereof, and the training programmes that it provided or selected.

### Article 325-24

The association shall inform the AMF promptly of any changes in key items in the initial authorisation application, notably concerning its senior management, organisation or supervision.

The AMF shall inform the association in writing of any consequences that such changes may have on the authorisation. Any modification to the code of conduct shall be submitted to the AMF for prior approval.

### Article 325-25

The association shall inform the AMF promptly of disciplinary action taken against any of its members and shall make available to the AMF the reports of its verifications.

## SUB-SECTION 4 - UPDATING THE DATABASE FILE ON FINANCIAL INVESTMENT ADVISERS

### Article 325-26

The association shall take all necessary measures to send the list of its members to the AMF.

It shall ensure that it has fulfilled its obligations under the IT requirements established by the AMF and relating to procedures for transmitting and updating the list of financial investment advisers.

### Article 325-27

Acting for and on behalf of its members, the association shall register their direct marketers in accordance with Article L. 341-4 of Monetary and Financial Code and the IT requirements of the Banque de France.

## SUB-SECTION 5 - REVOCATION OF AUTHORISATION

### Article 325-28

The AMF may revoke the authorisation of an association if it no longer meets the conditions of its initial authorisation or a subsequent authorisation, or if it fails to meet commitments undertaken at such time, or when the association has not made use of its authorisation within the past twelve months, or when it has been inactive for at least three months.

**Article 325-29**

When the AMF is considering revocation, it shall so inform the association and shall tell it the reasons therefor. The association shall have one month from receipt of such notification to submit any observations it may have.

**Article 325-30**

When the AMF decides to withdraw an authorisation, the association shall be notified of the AMF's decision by registered letter with return receipt. The AMF shall inform the public of the revocation by means of an online news release posted on its website and placed in newspapers or other publications of its choosing.

The decision shall specify the timetable and method for implementing the revocation.

Pending revocation, the association shall be placed under the supervision of an agent appointed by the AMF. It must inform its members that its authorisation has been revoked.

The agent shall be bound by professional secrecy rules.

**Article 325-31**

Where an association asks for its authorisation to be revoked, it shall explain the reasons for its request to the AMF and shall specify how it intends to enable its members to continue practising their profession.

**CHAPTER VI - DIRECT MARKETERS****CHAPTER VII - INVESTMENT ANALYSTS NOT ASSOCIATED WITH AN INVESTMENT SERVICE PROVIDER****Section 1 - Scope****Article 327-1**

I. - In implementation of VIII and IX of Article L. 621-7 of the Monetary and Financial Code, this Chapter sets forth :

- 1° Conduct-of-business conditions for natural and legal persons engaging in the activity of investment analysts.
- 2° Rules of conduct for natural persons working under the authority or on behalf of legal persons engaged in the activity of investment analysis ;
- 3° Provisions to ensure the independence of investment analysts' evaluations and prevent conflicts of interest

II. - The investment analysts concerned are natural and legal persons other than:

- 1° Investment service providers that produce or disseminate a general investment recommendation, as provided for in Article 313-25,
- 2° Collective investment scheme management companies, other than portfolio management companies, that carry on the business described in Article L. 544-1 of the Monetary and Financial Code.

**Section 2 - Production and dissemination of investment research****SUB-SECTION 1 - PRODUCTION OF ANALYSIS : INDEPENDENCE OF ANALYSTS AND MANAGEMENT OF CONFLICTS OF INTEREST****Article 327-2**

The provisions of Articles 313-9 to 313-12, Article 314-76, the second and third paragraphs of Article 315-1, and Articles 315-2 to 315-11 apply to investment analysts not employed by an investment services provider.

**Article 327-2-1**

In the interest of protecting its clients, its employees and market integrity, an investment analyst not employed by an investment services provider may restrict the right of colleagues to deal in financial instruments for own account if they are involved in activities that could give rise to a conflict of interest or have access to inside information, as mentioned in Article 621-1, or to confidential information.

With regard to the employees in question, such restrictions may include a total, partial, temporary or permanent ban on placing financial instrument orders for own account.

An investment analyst not employed by an investment services provider shall prohibit his colleagues from placing financial instrument orders for own account if they are likely to produce research concerning the issuer of the financial instrument in question. The same ban shall apply to all financial instruments in the sector to which the issuer belongs and to which the research is likely to apply.

#### **Article 327-2-2**

*(deleted by the Order of 5 August 2008)*

#### **Article 327-3**

Whenever a natural or legal person not associated with an investment service provider is subject to internal procedures or to a code of conduct, that person makes reference to such procedures or code in the investment research that it disseminates.

#### **Article 327-4**

I. - An investment analyst that does not depend on an investment service provider shall be deemed to produce independent evaluations if :

1° It has no significant shareholdings in credit institutions or investment firms ;

2° No credit institution or investment firm owns more than one-third of its shares directly or indirectly ;

3° It has no equity holdings in the issuers that it analyses or in the advisers to these issuers, and none of the issuers that it analyses and none of the advisers to these issuers have an equity holding in it.

4° It has no legal links to the issuers that it analyses, unless the issuer that orders an analysis undertakes not to intervene in the production of this analysis or to impede its dissemination.

5° If the investment analyst is a legal person, the majority of its share capital is owned by investment analysts that comply with the requirements stipulated in 1°, 2°, 3° and 4°.

II. - An investment analyst governed by this Chapter that has relations with a person or entity that prevent it from complying with any of the requirements stipulated in I shall adopt procedures and means to ensure that this person or entity shall not interfere in any way in the conduct of its business.

#### **Article 327-5**

An investment analyst governed by this Chapter shall retain documents, including analyses produced and disseminated, for at least five years.

### **SUB-SECTION 2 - ESTABLISHING A CODE OF CONDUCT**

#### **Article 327-6**

I. - Investment analysts governed by this Chapter shall adopt a code of conduct that defines :

1° The principles of integrity, independence, skill and organisation that they must comply with ;

2° The methodology used to produce their analyses.

The code of conduct shall be available for consultation at the investment analyst's registered office or business address. This document shall be posted on the investment analyst's website, if it has one.

II. - Investment analysts governed by this Chapter shall be exempted from the requirements in I if they belong to an industry association that is recognised by the AMF under the terms of Sub-section 3 of this Section.

### **SUB-SECTION 3 - RECOGNITION OF REPRESENTATIVE BODIES**

#### **Paragraph 1 - Requirements for recognition by the AMF**

#### **Article 327-7**

An association of investment analysts governed by this Chapter may apply to the AMF for recognition.

The recognised association must be representative of the investment analysis activity governed by this Chapter.

**Article 327-8**

I. - The industry association shall draw up a code of conduct that defines the fundamental principles that its members must comply with. The members of the association may give consideration to their size and organisational structure for the application of such principles.

The association shall draw up written procedures for supervising its members' compliance with legal, regulatory and ethical provisions.

II. - More specifically, the association's code of conduct shall define :

1° Written procedures for admitting and sanctioning its members ;

2° The skills, training, professional experience and resources that the members must have ;

3° A code of conduct, as stipulated in Article 337-6 ;

4° The confidentiality rules applying to its members ;

5° Where applicable, the establishment, management and supervision or participation in a mutual fund to finance research.

III. - The code of conduct shall specify any penalties for non-compliance.

IV. - The code of conduct shall be available for consultation by anyone at anytime by applying to the association's registered office. It shall also be posted on the association's website, if it has one.

**Article 327-9**

The association shall ensure that its members' knowledge is up to date by selecting or organising training.

**Article 327-10**

The association must have the human and material resources necessary for performing its tasks and ensuring its sustainability.

**Paragraph 2 - Recognition procedure****Article 327-11**

The recognition of an industry association requires the filing of an application, containing :

1° The articles of association of the association ;

2° A *curriculum vitae* and a copy of the judicial record for the legal representatives ;

3° The association's budget for the next three years ;

4° A draft code of conduct ;

5° A description of the personnel and technical resources to be used to ensure compliance with the requirements stipulated in this Chapter ;

6° The list of members.

**Article 327-12**

Before recognising an association, the AMF shall examine the application contents to see if the association meets the requirements set out in Articles 327-8 to 327-10.

The AMF shall have the right to request that the association provide any further information that it needs to make its decision.

**Paragraph 3 - Disclosures to the AMF****Article 327-13**

Within six months of the end of the financial year, the association shall provide the AMF with copies of its balance sheet and income statement, along with the activity report describing the supervision carried out and record keeping, and the training courses provided or selected.

**Article 327-14**

The association shall immediately notify the AMF of changes to the information contained in the initial application for recognition, and in particular, changes in management, organisation and supervision.

**Article 327-15**

The association shall immediately notify the AMF of any sanctions imposed on one of its members.

**Article 327-16**

The industry association shall provide the AMF with an updated list of its members within three months of the end of each calendar year.

**Paragraph 4 - Withdrawal of recognition****Article 327-17**

I. - The AMF may withdraw its recognition if the association no longer complies with the requirements and obligations therefor.

If it plans to withdraw recognition, the AMF shall notify the association and explain the grounds for the planned decision. The association then has one month from the receipt of this notice to make any response.

II. - If the AMF decides to withdraw recognition, the association shall be informed of its decision by registered letter with acknowledgement of receipt. The AMF shall inform the public of the withdrawal of recognition by posting a news release on its website.

The decision shall specify the terms and the implementation timeframe for the withdrawal of recognition.

The association must inform its members of the withdrawal of its recognition.

**Article 327-18**

If an association asks to surrender its recognition, it shall explain to the AMF the reasons for its request and the planned procedures for enabling its members to continue to conduct their business.

**Section 3 - Dissemination of investment research produced by third parties****Article 327-19**

Whenever a natural or legal person not associated with an investment service provider disseminates under its own responsibility an investment analysis produced by a third party, it provides a clear and prominent indication of its own identity in its report on that analysis.

**Article 327-20**

Whenever a natural or legal person not associated with an investment service provider substantially modifies an investment analysis produced by a third party in investment research that it disseminates, it shall provide a clear and detailed indication of the modification made.

When the modification made consists in changing the direction of a recommendation (for example, a "Buy" recommendation becomes a "Hold" or "Sell" recommendation, or vice versa), the obligations set forth in Articles 315-2 to 315-5, Points 1° and 2° of Article 315-6, and Articles 315-10 and 315-11 concerning the producer of the research must be met by the person who disseminates it, to the extent of the modification made.

**Article 327-21**

Whenever a natural or legal person not associated with an investment service provider substantially modifies an investment analysis produced by a third party in a research report that it disseminates, by itself or via individuals, it must have a procedure for indicating to recipients of the information where the analysis itself and the identity of the person who produced it can be found, as well as the disclosure of that person's interests or conflicts of interest, if such information has been made public.

**Article 327-22**

Whenever a natural or legal person not associated with an investment service provider disseminates a summary of a recommendation produced by a third party, it ensures that such summary is clear, is not misleading, mentions the

source document and indicates where the public can directly and readily find the disclosures concerning that source document, if such information has been made public.

#### **Article 327-23**

When the natural or legal person producing and disseminating investment research in the exercise of its profession or the conduct of its business is a credit institution that is not an investment service provider, or a natural person working under the authority or on behalf of such credit institution, and it disseminates research produced by a third party, such person is bound by the following obligations :

1° It indicates clearly and prominently the name of the regulatory authority with jurisdiction over it.

2° It complies with the requirements imposed on the producer in the fourth paragraph of Article 315-6 and in Articles 315-7 to 315-11, if the producer of the research in question has not previously disseminated it via a channel that gives a large number of people access to the information.

3° It complies with the requirements imposed on the producer in Articles 315-2 to 315-11 if it has substantially modified the analysis.

### **CHAPTER VIII - DISSEMINATION OF INVESTMENT RESEARCH FROM ABROAD**

#### **Single section - Transparency in investment research disseminated from abroad**

##### **Article 328-1**

The provisions of the second and third paragraphs of Article 315-1, Articles 315-2 to 315-8, and 315-10 to 315-13 shall apply to research disseminated from abroad that is accessible to investors customarily resident or established in France, whenever such research relates to issuers offering financial instruments to the public in France, that is to say :

1° issuers whose financial instruments are admitted to trading on a regulated market within the meaning of Article L. 421-1 of the Monetary and Financial Code, or for which application for admission has been made ; or

2° issuers whose securities are admitted to trading on a multilateral trading facility mentioned in Article 524-1.

### **CHAPTER IX - INVESTMENT RECOMMENDATIONS PRODUCED OR DISSEMINATED IN CONNECTION WITH A JOURNALISTIC ACTIVITY**

##### **Article 329-1**

The companies referred to in 1° of Article L. 621-31 of the Monetary and Financial Code that are not members of the association provided for in Article L. 621-32 of the Monetary and Financial Code, as well as professional journalists other than those mentioned in 2° of Article L. 621-31 of the Monetary and Financial Code, shall be subject to the provisions of this chapter when they produce or disseminate investment recommendations, as defined in Articles R. 621-30-1 to R. 621-30-4 of the Monetary and Financial Code, in connection with their journalistic activity.

##### **Article 329-2**

Investment recommendations shall comply with the following presentation rules :

1° Facts are distinguished from interpretations, estimates and analyses ;

2° Rumours are distinguished from confirmed information ;

3° All projections, forecasts, price targets and their underlying assumptions shall be labelled as such.

##### **Article 329-3**

It must be possible to identify the journalists referred to in Article 329-1 who produce the investment recommendation.

Such identification, including where a pseudonym is used, must be accessible to the public without disproportionate requirements.

The investment recommendation itself must include the disclosures provided for in the first and second paragraphs. However, where these requirements are disproportionate in relation to the length of the disseminated investment recommendation, the mandatory information should be mentioned directly in the body of the publication (the article,



the box containing legal notices or a special box) or the address of an appropriate website should be given in the same place.

For non-written investment recommendations, the obligations provided for in the first and second paragraphs may be fulfilled by referring to the arrangements for obtaining this information directly from an easily accessible public dissemination medium, especially a website.

#### **Article 329-4**

The AMF can ask the producer companies referred to in Article 329-1 to give details of the care they have taken and the methods they have used to ensure that the recommendation is reasonable.

#### **Article 329-5**

Journalists and the publisher of press publications, the publisher of radio or television services, the publisher of online public communication services or the press agency, referred to in Article 329-1, shall inform readers, listeners or viewers in a manner stipulated by the person legally responsible for publication (*directeur de la publication*), or failing this the legal representative of the company, and within a time period compatible with the editorial schedule, of any significant interest in one or more financial instruments that are the subject of the investment recommendation or any significant conflicts of interest with respect to an issuer to which the recommendation relates, where such interests or conflicts of interest are accessible or reasonably expected to be accessible to the persons involved in the preparation of that recommendation.

In particular, the public shall be informed of the fact that the publisher of press publications, the publisher of radio or television services, the publisher of online public communication services or the press agency :

1° has significant financial interests in the financial instruments that are the subject of the investment recommendation or in related financial instruments ;

2° is part of the same consolidation, within the meaning of the Seventh Council Directive 83/349/EEC of 13 June 1983 or internationally recognised accounting standards, as an issuer whose financial instruments are admitted to trading on a regulated market ;

3° is controlled directly or indirectly, within the meaning of Article L. 233-3 of the Commercial Code, by a natural person who controls said issuer directly or indirectly.

However, these disclosure requirements do not apply to shareholders agreements that are not subject to a statutory or regulatory disclosure obligation.

The investment recommendation itself must include the disclosures referred to in this article. However, where these requirements are disproportionate in relation to the length of the disseminated investment recommendation, the mandatory information should be mentioned directly in the body of the publication (the article, the box containing legal notices or a special box) or the address of an appropriate website should be given in the same place.

For non-written investment recommendations, the obligations provided for in the first and second paragraphs may be fulfilled by referring to the arrangements for obtaining this information directly from an easily accessible public dissemination medium, especially a website.

#### **Article 329-6**

Where a publisher of press publications, a publisher of radio or television services, a publisher of online public communication services or a press agency, referred to in Article 329-1, disseminates an investment recommendation produced by a third party, the identity of that party shall be clearly and prominently indicated in the recommendation.

The publisher or agency must also indicate any substantial alterations to the disseminated investment recommendation and, where such alterations would change the direction of the recommendation, all the information referred to in Articles 329-3 and 329-5. Where the publisher or the agency disseminates an investment recommendation which it has substantially altered, the location of the investment recommendation and the obligatory disclosures relating to it must also be mentioned, provided these are public.

Where a publisher of press publications, a publisher of radio or television services, a publisher of online public communication services or a press agency, referred to in Article 329-1, disseminates a summary of an investment recommendation produced by a third party, he shall ensure that it is clear and not misleading. The publisher or agency must also indicate the procedures for accessing the investment recommendation or the obligatory disclosures, provided these are public.



# GENERAL REGULATION OF THE AUTORITÉ DES MARCHÉS FINANCIERS



## BOOK IV - COLLECTIVE INVESTMENT PRODUCTS

### TITLE I - COLLECTIVE INVESTMENT SCHEMES

#### CHAPTER I - COMMON PROVISIONS FOR COLLECTIVE INVESTMENT SCHEMES

##### Article 411-1

The provisions of this Chapter shall apply to all collective investment schemes governed by Section 1 of Chapter IV of Title I of Book II of the Monetary and Financial Code, as well as to their portfolio management companies and depositories.

The provisions of this Chapter shall not apply to contractual collective investment schemes governed by Article L. 214-35-2 of the Monetary and Financial Code, venture capital funds registered via the fast-track procedure governed by Article L. 214-37 of said Code and collective investment schemes registered via the fast-track procedure governed by Article L. 214-35 as formerly worded, before Act 2003-706 of 1 August 2003.

##### Article 411-2

1° The term "collective investment scheme" shall designate an open-ended investment company (société d'investissement à capital variable, SICAV) or a common fund (fonds commun de placement, FCP);

2° The term "holder" shall designate the holder of units in an FCP or shares in a SICAV;

3° When SICAVs do not delegate the overall management of their portfolio, as stipulated in Article L. 214-15 of the Monetary and Financial Code, they must meet all the conditions applying to portfolio management companies and discharge the obligations applying to such companies.

#### Section 1 - Formation and authorization of collective investment schemes

##### SUB-SECTION 1 - SICAVs

##### Article 411-3

The articles of association of a SICAV shall be signed by the first shareholders in person, or by a specially empowered agent. These articles shall stipulate the names of the first shareholders and the amounts paid in by each of them, and, as appropriate, the names of the first directors or the names of the members of the executive board and the supervisory board, as well as the names of the first statutory auditor and, as appropriate, the alternate auditor, named in accordance with the conditions stipulated in Article L. 214-17 of the Monetary and Financial Code.

A SICAV cannot set up subfunds and issue different categories of shares unless its articles of association explicitly provide for it.

#### **Article 411-4**

The articles of association, along with the certificate issued by the depository to certify the deposit of the initial capital, shall be filed with the registry of the commercial court with jurisdiction over the registered office of the SICAV.

If the articles of association provide for SICAV to have subfunds, the depository shall also issue a certificate to the portfolio management company for each subfund.

The portfolio management company shall send these certificates to the AMF.

#### **Article 411-5**

I. - Authorization of a SICAV, which is provided for under Article L. 214-3 of the Monetary and Financial Code and, as appropriate, the authorization of each subfund provided for under Article L. 214-33 of said Code shall be subject to prior filing of an application with the AMF that shall contain the elements stipulated in an AMF instruction.

Absent a response from the AMF for one month following acknowledgement of receipt of the application by the AMF, authorization is deemed granted.

This period shall be reduced to eight business days for reserved SICAVs referred to in point 1° of Article 411-12 and, as appropriate, their subfunds.

If the AMF asks for additional information that requires the portfolio management company to submit a supplementary information sheet, the AMF shall serve written notice stipulating that the items requested must arrive within sixty days. If the AMF fails to receive these items within this period, the application for authorization shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the information requested. The acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than those stipulated in the second and third paragraphs.

II. - The time period referred to in I shall be reduced to eight business days following acknowledgement of receipt of the application by the AMF if the SICAV applying for authorization is comparable to a collective investment scheme already approved by the AMF.

The AMF shall assess the comparability of the SICAV applying for authorization ("comparable SICAV") and the AMF-approved collective investment scheme ("reference scheme") in light of the following factors *inter alia* :

1° The reference scheme and the comparable SICAV shall be managed by the same portfolio management company or the same delegated investment manager, or by portfolio management companies or delegated investment managers belonging to the same corporate group, and subject to the AMF's assessment of the information supplied by the portfolio management company of the comparable SICAV in accordance with an AMF instruction ;

2° The reference scheme shall have been approved by the AMF and been set up during the 18 months prior to the AMF's receiving the authorization application from the comparable SICAV. At the reasoned request of the portfolio management company of the comparable SICAV, the AMF may accept that the reference scheme was authorized and set up more than 18 months before receiving the application from the comparable SICAV ;

3° The reference scheme shall not have undergone any changes other than those listed in an AMF instruction. At the reasoned request of the portfolio management company of the comparable SICAV, the AMF may allow a collective investment scheme that has undergone changes other than those referred to in the instruction to be a reference scheme ;

4° Subscribers to the comparable SICAV shall meet the subscription and purchase rules of the reference scheme ;

5° The investment strategy, risk profile, operating rules and articles of the comparable SICAV shall be similar to those of the reference scheme.

Where one of the items in the constitutive documents of the comparable SICAV differs from that of the reference scheme, it shall be clearly identified in the comparable SICAV's authorization application, in accordance with an AMF instruction.

The authorization application of the comparable SICAV shall be filed electronically.

If the AMF asks for further information that requires a response by means of a supplementary information sheet, it shall serve written notice stipulating that the requested information must be supplied within sixty days. If the AMF does not receive these items within this period, the authorization application shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the information requested. The

acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than eight business days.

If either the comparable SICAV or the reference scheme fails to meet the conditions set forth in this article, the AMF shall serve written notice stipulating that the additional information needed to constitute an authorization application in accordance with the arrangement described in I must reach it within sixty days. If the AMF does not receive all this additional information within this period, the authorization application shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the additional information and shall examine the application for authorization of the SICAV in accordance with the procedure referred to in I. The acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than one month.

#### **Article 411-5-1**

For the purposes of authorizing the SICAV, as provided for in Article L. 214-3 of the Monetary and Financial Code, the AMF shall examine the SICAV's articles of association, the investment strategy it uses to achieve its investment objective, its expense structure and its share categories, if any, as presented in its constitutive documents.

The AMF shall also ensure that a depositary institution has been appointed to safekeep the assets of the SICAV.

#### **Article 411-5-2**

The deposit certificate for the initial capital of the SICAV shall be filed with the AMF immediately after the funds have been deposited, and no later than sixty days after the SICAV has been authorised.

For umbrella funds, this certificate shall be sent to the AMF within :

1° sixty days of the fund's authorisation for at least one of its subfunds ; and

2° ninety days of the authorisation notification date, for the other subfunds.

The deposit certificate shall specify the subfund(s) to which it pertains.

If the AMF does not receive the certificate within these time periods, it shall declare the authorisation null and void in accordance with the conditions set out in an AMF instruction.

Where warranted by special circumstances, the SICAV may make a reasoned request for an extension of the deadline for depositing the funds. Such request shall state the desired date and must reach the AMF before the date on which the authorisation is to be declared null and void. The AMF informs the SICAV of its decision within eight days of receiving the request.

#### **Article 411-6**

The marketing of shares in a SICAV and, where appropriate, one or more subfunds, cannot start until the AMF has served notice of its authorization. This notice shall be sent to the portfolio management company under the conditions set out in an AMF instruction.

### **SUB-SECTION 2 - COMMON FUNDS**

#### **Article 411-7**

I. - Authorization of a common fund (fonds commun de placement, FCP), which is provided for under Article L. 214-3 of the Monetary and Financial Code and, as appropriate, of each subfund provided for under Article L. 214-33 of said Code shall be subject to prior filing of an application with the AMF that contains the elements stipulated in an AMF instruction.

Absent a response from the AMF for one month following acknowledgement of receipt of the application by the AMF, authorization is deemed granted.

This period shall be reduced to eight business days for the reserved FCPs referred to in point 1° of Article 411-12 and, as appropriate, their subfunds.

If the AMF asks for additional information that requires the portfolio management company to submit a supplementary information sheet, the AMF shall serve written notice stipulating that the items requested must arrive within sixty days. If the AMF fails to receive these items within this period, the application for authorization shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the information requested. The acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than those stipulated in the second and third paragraphs.

II. - The time period referred to in I shall be reduced to eight business days following acknowledgement of receipt of the application by the AMF if the common fund applying for authorization is comparable to a collective investment scheme already approved by the AMF.

The AMF shall assess the comparability of the common fund applying for authorization ("comparable FCP") and the AMF-approved collective investment scheme ("reference scheme") in light of the following factors *inter alia* :

1° The reference scheme and the comparable FCP shall be managed by the same portfolio management company or the same delegated investment manager, or by portfolio management companies or delegated investment managers belonging to the same corporate group, and subject to the AMF's assessment of the information supplied by the portfolio management company of the comparable FCP in accordance with an AMF instruction ;

2° The reference scheme shall have been approved by the AMF and been set up during the 18 months prior to the AMF's receiving the authorization application from the comparable FCP. At the reasoned request of the portfolio management company of the comparable FCP, the AMF may accept that the reference scheme was authorized and set up more than 18 months before receiving the application from the comparable FCP ;

3° The reference scheme shall not have undergone any changes other than those listed in an AMF instruction. At the reasoned request of the portfolio management company of the comparable FCP, the AMF may allow a collective investment scheme that has undergone changes other than those referred to in the instruction to be a reference scheme ;

4° Subscribers to the comparable FCP shall meet the subscription and purchase rules of the reference scheme ;

5° The investment strategy, risk profile, operating rules and articles of the comparable FCP shall be similar to those of the reference scheme.

Where one of the items in the constitutive documents of the comparable FCP differs from that of the reference scheme, it shall be clearly identified in the comparable FCP's authorization application, in accordance with an AMF instruction.

The authorization application of the comparable FCP shall be filed electronically.

If the AMF asks for further information that requires a response by means of a supplementary information sheet, it shall serve written notice stipulating that the requested information must be supplied within sixty days. If the AMF does not receive these items within this period, the authorization application shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the information requested. The acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than eight business days.

If either the comparable FCP or the reference scheme fails to meet the conditions set forth in this article, the AMF shall serve written notice stipulating that the additional information needed to constitute an authorization application in accordance with the arrangement described in I must reach it within sixty days. If the AMF does not receive all this additional information within this period, the authorization application shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the additional information and shall examine the application for authorization of the FCP in accordance with the procedure referred to in I. The acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than one month.

#### **Article 411-7-1**

For the purposes of authorizing the FCP, as provided for in Article L. 214-3 of the Monetary and Financial Code, the AMF shall examine the FCP's articles of association, the investment strategy it uses to achieve its investment objective, its expense structure and its unit categories, if any, as presented in its constitutive documents.

The AMF shall also ensure that a depository institution and a management company have been appointed for the assets of the FCP.

#### **Article 411-7-2**

The deposit certificate for the initial capital of the FCP shall be filed with the AMF immediately after the funds have been deposited, and no later than sixty days after the FCP has been authorised.

For umbrella funds, this certificate shall be sent to the AMF within :

1° sixty days of the fund's authorisation for at least one of its subfunds ; and

2° one hundred and ninety days of the authorisation notification date, for the other subfunds.

The deposit certificate shall specify the subfund(s) to which it pertains.

If the AMF does not receive the certificate within these time periods, it shall declare the authorisation null and void in accordance with the conditions set out in an AMF instruction.

Where warranted by special circumstances, the portfolio management company may make a reasoned request for an extension of the deadline for depositing the funds. Such request shall state the desired date and must reach the AMF before the date on which the authorisation is to be declared null and void. The AMF informs the portfolio management company of its decision within eight days of receiving the request.

#### **Article 411-8**

The rules provided for in Article L. 214-24 of the Monetary and Financial Code shall set the term of the FCP and the minimum amount of its initial assets, which shall not be less than the amount stipulated in Article D. 214-21 of the Monetary and Financial Code.

The rules shall also stipulate the procedures for distributing the assets of the FCP, the subscription and redemption procedures and, as appropriate, the procedures governing the rights attached to the different categories of units.

An FCP cannot set up subfunds unless its rules specifically provide for it.

An AMF instruction shall stipulate the contents of the headings to be included in an FCP's rules.

#### **Article 411-9**

The marketing of FCP units and, where appropriate, subfunds, cannot start until the AMF has served notice of its authorization. This notice shall be sent to the FCP's portfolio management company under the conditions set out in an AMF instruction. Subscriptions may start once this notice has been received. The founders shall undertake to complete, as appropriate, subscriptions before the end of the time period stipulated in the abovementioned instruction for reaching the minimum amount stipulated in the FCP rules. The time period shall start upon notification of the FCP's authorization.

As soon as the amount stipulated in the first paragraph of this Article has been reached, the portfolio management company shall determine the first net asset value. The corresponding deposit certificate issued by the depository shall be filed with the AMF immediately.

If the FCP is made up of subfunds, the depository shall issue a deposit certificate for each subfund.

### **SUB-SECTION 3 - COLLECTIVE INVESTMENT SCHEMES THAT COMPLY WITH DIRECTIVE 85/611/EC OF 20 DECEMBER 1985**

#### **Article 411-10**

A collective investment scheme that is authorised as an undertaking for collective investment in transferable securities (UCITS), in compliance with Directive 85/611/EEC of 20 December 1985, shall be harmonised and cannot be transformed into a collective investment scheme that does not comply with said Directive.

A collective investment scheme that is not harmonised, may request to be converted to a UCITS.

### **SUB-SECTION 4 - CATEGORIES OF FCP UNITS AND SICAV SHARES**

#### **Article 411-11**

The portfolio management company must ensure equal treatment of unit holders in the same collective investment scheme.

The full prospectus referred to in Article 411-45 may provide for different categories of units or shares within the same collective investment scheme or within the same subfund.

These categories may :

- 1° Be subject to different rules for distributing income ;
- 2° Be denominated in different currencies ;
- 3° Be subject to different management fees ;
- 4° Be charged different subscription and redemption fees ;
- 5° Have different par values ;
- 6° Be systematically hedged against currency risk partly or totally, as defined in the full prospectus. Such hedges shall be provided by means of financial instruments that minimise the impact of hedging transactions on the other categories of units within the collective investment scheme.

Subscriptions for a given category of units or shares may be reserved for a category of investors defined in the full prospectus according to objective criteria, such as a subscription amount, a minimum holding period or any other commitment given by the holder.

## **Section 2 - Operating rules**

### **SUB-SECTION 1 - SUBSCRIPTION AND REDEMPTION RULES**

#### **Article 411-12**

FCP units and SICAV shares shall be issued at any time at the request of the unit holders and shareholders on the basis of their net asset value, plus any subscription fees.

However, the collective investment scheme may stop issuing units or shares under the provisions of the second paragraph of Article L. 214-19 and the second paragraph of Article L. 214-30 of the Monetary and Financial Code in the following cases :

1° The collective investment scheme is reserved for a maximum of 20 holders, defined by the full prospectus, or for a category of investors whose characteristics are defined precisely in the full prospectus of the collective investment scheme.

2° The full prospectus defines objective conditions that trigger a temporary or definitive closure of subscriptions, such as a maximum number of units or shares to be issued, a maximum amount of assets or the end of a given time period for subscriptions.

#### **Article 411-13**

Collective investment scheme shares and units shall be redeemed at any time on the basis of their net asset values, under the conditions set out in Articles 411-54 to 411-56. If the right provided for in the first paragraph of Article L. 214-19 and in the first paragraph of Article L. 214-30 of the Monetary and Financial Code is exercised, the portfolio management company shall notify the AMF of the reasons and procedures for suspending redemptions on or before the date on which the suspension is implemented.

### **SUB-SECTION 2 - MINIMUM ASSETS**

#### **Article 411-14**

If the assets of a SICAV are worth less than EUR 4,000,000, no SICAV shares shall be redeemed.

If the assets of an FCP are worth less than EUR 300,000, or less than EUR 160,000 if the FCP is reserved under the provisions of the third paragraph of Article 411-12, redemptions of units shall be suspended.

If the assets remain under the amounts stipulated in the first and second paragraphs for thirty days, the collective investment scheme in question shall be wound up or subject to one of the transactions provided for in Article 411-17.

If the collective investment scheme is an umbrella fund, the provisions of this Article shall apply to each of its subfund.

This article does not apply to the collective investment schemes referred to in Article R. 214-27 of the Monetary and Financial Code.

### **SUB-SECTION 3 - CONSTITUTING AND TRANSFERING NEW SUBFUNDS**

#### **Article 411-15**

The prior authorisation of the AMF shall be required for constituting and changing subfunds as stipulated in points I and IV of Article L. 214-33 of the Monetary and Financial Code, in accordance with a procedure set out in an AMF instruction.

### **SUB-SECTION 4 - CONTRIBUTIONS IN KIND**

#### **Article 411-16**

Contributions in kind, which shall include only the assets stipulated in Articles R. 214-1-1 and R. 214-5 of the Monetary and Financial Code, shall be appraised in compliance with the conditions stipulated in Articles 411-27 à 411-33.

### **SUB-SECTION 5 - MODIFICATIONS**

#### **Article 411-17**

Two types of modification can occur in the life of a collective investment scheme :



1° Modifications that require authorisation, which are called "transfers" ; these are conversions, mergers/demergers, winding-ups and liquidations ;

2° Modifications that do not require authorisation, which are called "changes".

The procedures for informing holders and the conditions under which holders can redeem their units or shares shall be set out in an AMF instruction.

### **Paragraph 1 - Transfers**

#### **Article 411-18**

An AMF instruction shall stipulate the conditions under which the AMF shall authorise transfers affecting a collective investment scheme. The time limit for granting authorisation shall be eight business days.

#### **Article 411-19**

A SICAV or an FCP may merge with any SICAV or any FCP.

A SICAV may merge with any other company.

Any collective investment scheme can be demerged.

The rules in this Article shall apply, as appropriate, to contributions of subfunds and transactions involving several subfunds in the same collective investment scheme.

#### **Article 411-20**

Any plans for mergers/demergers and takeovers involving one or more collective investment schemes or one or more subfunds in a collective investment scheme shall be decided upon by the board of directors or the executive board of the SICAV or by the portfolio management company of the FCP. The plans shall be submitted for the prior authorisation of the AMF under the conditions stipulated in Section 1 of this Chapter.

The plans for a merger or demerger shall stipulate, as appropriate, the name(s), the registered office(s), the company register number(s) of the SICAVs involved and the name(s) of the FCP(s) involved, as well as the name(s), registered office(s) and company register number(s) of the portfolio management company or companies.

The plans shall also stipulate the reasons, purpose and terms of the transaction. They shall stipulate the date on which the extraordinary general meetings of the SICAVs involved shall vote on the exchange ratios for shares and units.

#### **Article 411-20-1**

By way of derogation to Article 411-20, the split decided in accordance with the second paragraph of Article L. 214-19 or the second paragraph of Article L. 214-30 of the Monetary and Financial Code is not subject to prior AMF authorisation but shall be notified to the AMF without delay.

This notification shall contain the following information, *inter alia* :

1° The report to shareholders or unitholders, referred to in Articles D. 214-20-3 and D. 214-22-1 of the Monetary and Financial Code ;

2° The list of assets transferred to the scheme governed by Chapter III of Title I, subsection 4 of Section 3, of this book.

#### **Article 411-21**

The plans shall be filed with the registry of the commercial court having jurisdiction over the registered offices of the companies concerned. Within eight days of that date, the statutory auditors shall compile a supplementary report on the final terms of the transaction.

The boards of directors or the executive boards of each of the companies concerned shall send the plans to the statutory auditors of each company and each FCP concerned at least forty-five days before the extraordinary general meetings of the SICAVs vote on the transaction, or the date set by the boards of directors or the executive boards of the portfolio management companies of the FCPs concerned. The transaction shall be carried out by the boards of directors or the executive boards of the SICAVs concerned, or their agents, and, where appropriate, by the portfolio management companies of the FCPs, under the supervision of the statutory auditors of each of the collective investment schemes concerned. The statutory auditors' reports on the terms under which the transaction is to be carried out shall be made available to holders no later than fifteen days before the date set by the extraordinary general meetings, or, in the case of FCPs, by the portfolio management company or companies.

Creditors of collective investment schemes involved in the merger who hold claims originating before the announcement of the planned merger may file an objection to the merger. In the case of SICAVs, the objection shall be filed within thirty days of publication of the merger plan in a newspaper authorised to publish legal announcements in the administrative area (*département*) housing the registered office of the SICAV, and, in the case of FCPs, fifteen days before the date set for the transaction. Within eight days after the transaction date, the statutory auditors shall compile a supplementary report on the final terms of the transaction.

#### **Article 411-21-1**

Article 411-21 does not apply when an FCP is split pursuant to the second paragraph of Article L. 214-30 of the Monetary and Financial Code.

#### **Article 411-22**

The obligation to redeem or issue shares and units at any time may be ended by a decision of the board of directors or the executive board of the SICAV, or the portfolio management company of the FCP up to fifteen days before the date of the planned transaction. The articles of association of the SICAVs created by the transactions referred to in Article 411-17 shall be signed by their legal representatives. The rules for FCPs shall be drawn up by the portfolio management companies and the depositories.

The holders shall have three months in which to redeem their units or shares free of charge.

#### **Article 411-23**

Holders who are not entitled to a whole number of units or shares as a result of the exchange ratio shall be able to redeem their fractional units and shares for cash or make a cash payment for the difference in order to receive a whole share or unit. Such redemptions and payments shall not be subject to redemption or subscription fees or commissions.

#### **Article 411-24**

If a collective investment scheme or a subfund thereof is liquidated, the statutory auditor shall value the assets and produce a report on the liquidation terms and the transactions that have taken place since the end of the previous financial year. This report shall be made available to the holders. It shall be sent to the AMF.

#### **Article 411-25**

The liquidation terms and the procedures for distributing assets shall be set out in the FCP rules or the articles of association of the SICAV. The collective investment scheme depository, the portfolio management company of the FCP or the board of directors or the executive board of the SICAV shall perform the duties of the liquidator. Failing this, a liquidator shall be appointed by the courts at the request of any holder.

In the case of an umbrella fund, the FCP rules or the articles of association of the SICAV shall stipulate the terms and procedures for distributing assets in the event of liquidation of the subfunds.

### **Paragraph 2 - Changes**

#### **Article 411-26**

Collective investment schemes that undergo changes must report them in accordance with the procedures set out in an AMF instruction.

## **SUB-SECTION 6 - ACCOUNTING AND FINANCIAL PROVISIONS**

### **Paragraph 1 - Valuation**

#### **Article 411-27**

The financial instruments, contracts, securities and deposits listed as the assets of a collective investment scheme or held by such a scheme shall be valued every day that the net asset value is determined, in accordance with the conditions set out in the full prospectus.

#### **Article 411-28**

The financial instruments, contracts, securities and deposits that are not traded on a regulated market referred to in Article L. 422-1 of the Monetary and Financial Code or on a regularly operating regulated market in a country that

is neither a member of the European Community nor party to the European Economic Area (EEA) agreement, as long as said market has not been ruled out by the AMF, shall be valued each time the net asset value is determined in accordance with Article 411-27, as long as the maturity at issue is greater than three months.

**Article 411-29**

The portfolio management company shall value the financial instruments, contracts, securities and deposits for which no prices have been observed or quoted on the day the net asset value is determined.

**Article 411-30**

Each category of financial instruments, contracts, securities and deposits listed as the assets of a collective investment shall be subject to the same valuation rules. The rules shall be submitted for approval by the AMF when the collective investment scheme is created. Any plans for changing such rules shall be submitted to the AMF. Approval shall be deemed to be granted after two months, unless the AMF serves notice that it has been refused.

Holders shall be informed of the changes in the valuation rules.

**Article 411-31**

The net asset value shall be obtained by dividing the net assets of the collective investment scheme by the number of shares or units.

The portfolio management company shall make the net asset value available and communicate it to any person who requests it.

The net asset value shall be sent to the AMF on the same day as it is determined in accordance with the procedures set out in an AMF instruction.

If a collective investment scheme issues different categories of units or shares, the net asset value of the units or shares in each category shall be obtained by dividing the portion of net assets corresponding to the category of units or shares in question by the number of units or shares in that category. The procedures for calculating the net asset values for categories of collective investment scheme units or shares shall be explained in the full prospectus.

**Article 411-32**

If collective investment scheme units or shares are denominated in different currencies, only one currency of account shall be used to record the assets of the collective investment scheme or the subfund.

**Article 411-33**

Articles 411-27 and 411-33 shall apply to each subfund of a collective investment scheme made up of subfunds.

Even if separate accounts are kept, each category of financial instruments, contracts, securities and deposits listed as the assets of subfunds of the same class in the same collective investment scheme shall be subject to the same valuation rules.

**Article 411-33-1**

The procedures for calculating the beneficiary's claim on the collective investment scheme, mentioned in the fifth subparagraph of I of Article R. 214-12 of the Monetary and Financial Code, are as follows :

1° the base on which the claim is calculated shall consist of all the scheme's financial obligations resulting from transactions in the financial instruments or contracts referred to in point I of Article L. 431-7-1 of the Monetary and Financial Code, before taking into account the assets and rights constituting the guarantee ;

2° the portfolio management company shall obtain the value of the claim from the collateral taker, as computed by the taker ;

3° the portfolio management company shall implement an internal procedure enabling it to check, on a daily basis, the value of the claim communicated by the collateral taker pursuant to point 2 ;

4° the internal procedure mentioned in point 3° shall include a mechanism to enable the portfolio management company to reduce observed value differences. The company shall set the trigger levels for this mechanism based on the nature of the debt claim and shall specify the decisions to be taken to reduce an observed value difference.

**Article 411-33-2**

The procedures for valuing the assets or rights constituting the guarantee granted by the collective investment scheme, as mentioned in the sixth subparagraph of I of Article R. 214-12 of the Monetary and Financial Code, are as follows :

1° the assets or rights constituting the guarantee are valued under the same valuation rules used by the scheme to value its assets and off-balance-sheet commitments ;

2° the portfolio management company shall obtain the value of the assets or rights constituting the guarantee from the beneficiary thereof, as calculated by said beneficiary ;

3° the portfolio management company shall implement an internal procedure enabling it to check, on a daily basis, the value of the assets and rights constituting the guarantee communicated by the beneficiary pursuant to point 2° ;

4° the internal procedure mentioned in point 3° shall include a mechanism to enable the portfolio management company to reduce observed value differences. The company shall set the trigger levels for this mechanism and specify the decisions to be taken to reduce an observed value difference.

## Paragraph 2 - Specific investment rules

### Article 411-34

Investment funds as defined in Article R. 214-5 of the Monetary and Financial Code shall meet the following criteria at all times:

1° The unit holders or shareholders shall have real rights to their assets ;

Custody of their assets, within the meaning of Article 323-2, shall be provided separately from custody of the custodian's own assets and those of its agents ;

3° They shall disseminate adequate periodic information and, more specifically, their units or shares shall be valued appropriately at least once a month. They shall be legally required to have their financial statements audited or certified at least once a year by statutory auditors ;

4° They shall not be based in countries or territories identified as uncooperative by the FATF.

### Article 411-34-1

The investment funds referred to in *b* of 2° of II of Article R. 214-25 of the Monetary and Financial Code shall comply with the criteria stipulated in Article 411-34 and the following criteria:

1° The costs shall not jeopardise the management objective and the tracking of the underlying index of financial instruments;

2° The liquidity of the index shall be in line with that of the component financial instruments. It must enable fair, orderly and efficient trading of the non-harmonised foreign investment fund on the market on which it has been listed.

### Article 411-35

The standard deviation of the difference between the performance of an index fund referred to in Article R. 214-28 of the Monetary and Financial Code and the index is called the "tracking error" (ES). It shall be calculated as follows :

$$ES = \sqrt{52} \sqrt{\frac{1}{N} \sum_{s=1}^N (R_s - \bar{R})^2}$$

$$R_s = \ln \left[ \frac{VL\_fund_s}{VL\_fund_{s-1}} \right] - \ln \left[ \frac{index_s}{index_{s-1}} \right]$$

$R_s$  : is the differential between the fund and the reference index during week  $S$ , as calculated from the changes in the net asset value of the fund and the value of the index,

$$\bar{R} = \frac{1}{N} \sum_{s=1}^N R_s$$

is the mean differential over 1 year ( $N = 52$  weeks).

The tracking error calculated according to the provisions of this Article shall not exceed either of the following two limits :

1° 1 per cent or else 5 per cent of the index volatility, whichever is greater ;

2° 2 per cent or else 10 per cent of the index volatility, whichever is greater.

The limit set in point 2° shall apply only to collective investment schemes that fulfil at least one of the following conditions :

- a) The financial instruments that make up the index are traded on markets that do not have the same trading hours ;
- b) The financial instruments that make up the index are traded on markets where trading days are not the same as the days on which the net asset value of the collective investment scheme is published ;
- c) The index is made up of a substantial proportion of financial instruments for which the trading prices are published in different currencies ;
- d) There is a time lag between the valuation of the collective investment scheme and the valuation of the index ;
- e) The index is published in a different currency than the one used to publish the net asset value of the collective investment scheme ;
- f) The index is replicated artificially using derivatives.

If the prospectus for a collective investment scheme states that it is an "enhanced index fund", the tracking error to be calculated under the provisions of this Article shall not exceed 4 per cent or else 20 per cent of the index volatility.

At the request of the portfolio management company, and when special circumstances warrant such a decision, the AMF may increase the standard deviation limits set out in this Article when it authorises a new tracker fund or the transfer of a tracker fund.

The management techniques used by the portfolio management company shall be aimed at complying with these limits. If the limits are not complied with, the portfolio management company must be able to explain the reasons for the failure to comply. This failure shall be adequately disclosed to the holders under the conditions set out in an AMF instruction.

The use of the exception provided for in the last paragraph of Article R. 214-28 of the Monetary and Financial Code shall be mentioned in the prospectus of the collective investment scheme.

An AMF Instruction shall specify the procedures for calculating the tracking error over the one-year reference period. The Instruction shall stipulate the holder disclosure procedures.

### **Paragraph 3 - Annual financial statements**

#### **Article 411-36**

At the end of each financial year, the board of directors or the executive board of the SICAV or the portfolio management company of the FCP shall compile an inventory of the miscellaneous assets and liabilities of the collective investment scheme. The depository shall certify the inventory of the collective investment scheme's assets, the amounts of the deposits held by the collective investment scheme and, where appropriate, the number of outstanding units or shares in the collective investment scheme.

The board of directors or the executive board of the SICAV or the portfolio management company of the FCP shall draw up the annual financial statements of the collective investment scheme. The same body shall, where appropriate, determine the amount and payment date of the distribution provided for under the provisions of Article L. 214-10 of the Monetary and Financial Code.

If the collective investment scheme is made up of subfunds, summary statements shall be produced for each subfund. These documents shall report on the situation on the last day of the collective investment scheme's accounting period. The statements shall be sent to any holder asking for them.

#### **Article 411-37**

The annual financial statements of the collective investment scheme shall comply with the chart of accounts in force. They shall be certified by the statutory auditor.

**Article 411-38**

The annual financial statements of the collective investment scheme, along with the report by the board of directors or the executive board of the SICAV or the portfolio management company of the FCP shall be made available to the statutory auditor within 45 days of the end of the financial year.

Within two months of receiving the report by the board of directors or the executive board of the SICAV or the portfolio management company of the FCP, the statutory auditor shall submit its report to the registered office of the SICAV or of the portfolio management company of the FCP, along with the special report provided for under paragraph 3 of Article L. L. 225-40 of the Commercial Code, if appropriate.

**Article 411-39**

An AMF instruction shall determine the contents of the report by the portfolio management company on the management of the FCP or of the report by the board of directors or the executive board of the SICAV.

**Article 411-40**

The annual financial statements, the list of assets at the end of the financial year, the statutory auditors' reports and the report by the board of directors or the executive board of the SICAV shall be made available for holders at the registered office of the SICAV or the portfolio management company of the FCP. They shall be sent to any holders who request them within eight business days of receiving the request.

Subject to the holder's consent, the documents may be sent electronically.

**Paragraph 4 - Advances and contributions****Article 411-41**

The board of directors or the executive board of the SICAV or the portfolio management company of the FCP may decide to distribute one or more advances on the basis of the statements certified by the statutory auditor.

The statutory auditor shall assess both the valuation of contributions in kind and their compensation. The auditor's report must be filed within fifteen days after the contribution.

If the contributions in kind involve one or more subfunds in a collective investment scheme, the statutory auditor shall produce a report describing the transaction for each subfund concerned.

**Paragraph 5 - Fees paid by the collective investment scheme****Article 411-42**

When compensation for the assignees of the portfolio management company or the depository and the companies affiliated with the portfolio management company under the conditions set out in Article R. 214-46 of the Monetary and Financial Code, which are acting on behalf of a collective investment scheme or as counterparties to a transaction made by this collective investment scheme, is deducted directly from a collective investment scheme's assets, it shall not have the effect of increasing the maximum fees of the collective investment scheme as defined in the full prospectus.

**Article 411-43**

Rebates of management fees received for investments made on behalf of a collective investment scheme in FCP units or SICAV shares, or in investment fund units or shares as defined in Article R. 214-5 of the Monetary and Financial Code shall be paid into the collective investment scheme :

1° Either through a direct payment to the collective investment scheme ;

2° Or by means of a deduction from the management fee charged by the portfolio management company.

**Article 411-44**

The statutory auditor's fees shall be set by mutual agreement between the auditor and the portfolio management company in consideration of the programme of audit actions deemed to be necessary.

## Paragraph 6 - Measuring the derivatives commitment of collective investment schemes

### Article 411-44-1

(takes effect at 1 January 2007)

For the purposes of this paragraph :

1° The leverage of a collective investment scheme referred to in III of Article R. 214-12 of the Monetary and Financial Code is equal to the amplifying potential divided by the scheme's net asset value ;

2° The sensitivity of a financial instrument is equal to the opposite of the derivative of the market value of that financial instrument with respect to the interest rate, divided by the value of the instrument ;

3° The maximum sensitivity authorised for a collective investment scheme is equal to the higher of the following two values, as specified in the scheme's full prospectus :

a) the absolute value of the maximum sensitivity ;

b) the absolute value of the minimum sensitivity.

Where the values given in a) and b) are not mentioned in the full prospectus of the collective investment scheme, the maximum authorised sensitivity shall be 10.

4° The value at risk of a collective investment scheme is equal to the maximum loss that the scheme may incur over a specified period with a given probability, called a confidence threshold. By conventional definition, value at risk is positive.

Unless otherwise specified, the value at risk of a collective investment scheme is spread over a period of seven days with a 95 % confidence threshold.

5° The delta of a derivative financial instrument is equal to the derivative of the instrument's market value relative to the market value of the underlying instrument.

6° The interest rate beta of a financial instrument is equal to the instrument's sensitivity divided by the maximum sensitivity of the collective investment scheme.

### Article 411-44-2

(takes effect at 1 January 2007)

I. - A distinction is made between two types of derivative financial instrument, according to their risk profile :

1° Derivative financial instruments with a risk profile that can be measured satisfactorily, in accordance with an AMF instruction, by the linear approximation method are said to be simple ;

2° Other derivative financial instruments are said to be complex.

II. - A distinction is made between two types of collective investment scheme depending on the type of derivative financial instruments they use :

1° A collective investment scheme is categorised as Type A if the linear approximation method satisfactorily captures risks relating to the derivative financial instruments used by the scheme, to temporary purchases and sales of financial instruments, to derivative financial instruments embedded in other financial instruments held by the collective investment scheme, as mentioned in Article R. 214-15 the Monetary and Financial Code, and, in the case of a leveraged collective investment scheme with streamlined investment rules, to cash borrowings.

A Type A scheme shall satisfy the following conditions, *inter alia*, at all times :

a) Performance depends on directional interest-rate, credit and exchange-rate risks, on equity market variations, or on several such risks at the same time. Performance does not depend significantly on arbitraging between these risk sources or on other risk sources ;

b) The maximum loss due to the use of the complex derivative financial instruments referred to in point 5° of I of Article 411-44-4 is less than or equal to 10 % of the value of the collective investment scheme's net asset value.

2° Other types of collective investment scheme are categorised as Type B.

### Article 411-44-3

(takes effect at 1 January 2007)

To calculate their commitment, Type A collective investment schemes use the linear approximation method or the probabilistic method. Type B collective investment schemes use the probabilistic method.

The asset management company of the collective investment scheme determines whether the scheme is Type A or Type B. It thus ensures, *inter alia*, that the nature of the derivative financial instruments in the collective investment scheme and the way in which they are used are consistent with a linear approximation-based assessment of the instruments' risk profile.

#### **Article 411-44-4**

*(takes effect at 1 January 2007)*

I. - The commitment of a Type A collective investment scheme, calculated by the linear approximation method, is equal to its leverage multiplied by its net asset value.

This commitment is equal to the sum of :

1° The absolute values of the amplifying potential of simple derivative financial instruments whose main risk is an equity risk, after netting between simple derivative financial instruments on the same underlying instrument and netting between simple derivative financial instruments and cash-settled financial instruments.

For the purposes of calculating the commitment, derivative financial instruments exposed mainly on the market for collective investment schemes and investment funds are treated according to the same procedures as derivative financial instruments whose main risk is an equity risk.

2° The absolute value of the sum of the amplifying potential of simple derivative financial instruments whose main risk is an interest rate risk, after netting between simple derivative financial instruments whose main risk is an interest rate risk and netting between simple derivative financial instruments and cash-settled financial instruments ;

3° The market value of underlying instruments in temporary purchases of financial instruments and financial instruments acquired by reinvesting funds from temporary sales of financial instruments, after the commitment has been calculated in accordance with an AMF instruction ;

4° Without prejudice to the provisions of II, where the collective investment scheme uses a derivative financial instrument on its own or in combination with other financial instruments to obtain an exposure identical to that obtained through cash-settled financial instruments, the additional amount that would have had to be invested in those cash-settled financial instruments to obtain the same exposure ;

5° The risk of maximum loss arising from the use of complex derivative financial instruments other than those referred to in point 4° and in II ;

6° For leveraged collective investment schemes with streamlined investment rules and cash loans.

Derivative financial instruments exposed mainly to the foreign exchange market are not taken into account when calculating the commitment of a Type A collective investment scheme.

II. - Where a derivative financial instrument has all three of the following characteristics :

1° Its purpose is to swap the performance of some or all of the assets of the collective investment scheme for the performance of a basket of financial instruments ;

2° It totally protects the collective investment scheme against variations in the market value of the swapped portion of the scheme's assets and totally exposes the collective investment scheme to variations in the market value of the basket of financial instruments ;

3° It does not have an option component ;

The calculation of the commitment is adapted according to the following procedures :

1° The derivative financial instrument is not taken into account when calculating the commitment.

2° The swapped portion of the collective investment scheme's assets cannot be offset with derivative financial instruments.

3° The basket of financial instruments whose performance is received by the collective investment scheme may be offset with other derivative financial instruments, as specified in an AMF instruction.

III. - The amplifying potential of a simple derivative financial instrument is equal to :

1° for a derivative financial instrument exposed mainly to the equity market : the delta of the derivative financial instrument multiplied by the market value of the instrument's underlying asset.

Where this derivative financial instrument is a futures contract, its amplifying potential is equal to the settlement value of the contract.

2° for a derivative financial instrument exposed mainly to the interest rate market : the interest rate beta of the financial instrument multiplied by its market value. The amplifying potential is therefore equal to the product of :



- a) the delta of the derivative financial instrument ;
- b) the interest rate beta of the asset underlying the derivative financial instrument ;
- c) the market value of the asset underlying the derivative financial instrument ;

3° For a swap agreement : the sum of the amplifying potential of the cash flows to be paid and received, measured in accordance with points 1° or 2° depending on the type of exposure.

An AMF instruction will set out the procedures for aggregating amplifying potential, netting between derivative financial instruments and offsetting with financial instruments.

#### **Article 411-44-5**

*(takes effect at 1 January 2007)*

I. - The commitment of a collective investment scheme calculated by the probabilistic method consists of the higher of the scheme's amplifying potential and its potential loss.

II. - The amplifying potential calculated by the probabilistic method is equal to the ratio of the value at risk of the collective investment scheme's assets to the value at risk of a benchmark indicator determined in an AMF instruction, minus one, multiplied by the net asset value of the collective investment scheme.

Where a benchmark indicator cannot be determined :

1° The amplifying potential shall be equal to twenty times the value at risk of the net asset value of the collective investment scheme. If warranted by the nature of the implemented strategy and the associated risks, the AMF can authorise the collective investment scheme to use a different amplifying potential. In this case, that effect shall be equal to or greater than ten times the value at risk of the net asset value ;

2° Where the collective investment scheme is covered by Articles R. 214-32 to R. 214-35 of the Monetary and Financial Code, the amplifying potential is equal to thirty times the value at risk of its net asset value. If warranted by the nature of the implemented strategy and the associated risks, the AMF can authorise the collective investment scheme to use a different amplifying potential. In this case, that effect shall be equal to or greater than fifteen times the value at risk of the net asset value.

III. - The potential loss of the collective investment scheme is measured by the value at risk of its net asset value.

Where the value at risk is not representative of the default risk of the collective investment scheme, the asset management company shall implement a procedure for managing the scheme's default risk.

#### **Article 411-44-6**

Articles 411-44-1 to 411-44-5 shall come into force on 1 January 2007.

### **Section 3 - Public information**

#### **Article 411-45**

The information that the collective investment scheme is required to disseminate shall be transparent, complete and clear.

#### **SUB-SECTION 1 - FULL PROSPECTUS**

#### **Article 411-45-1**

A full prospectus shall be produced for every collective investment scheme.

The full prospectus shall comprise the following documents, and an AMF instruction shall specify the contents thereof :

1° A simplified prospectus presenting the key information necessary for investors' decision-making. It must indicate that the latest annual report, periodic financial statement and full prospectus are available free of charge on request. It shall be laid out and written in such a way that it is easy for investors to understand and provides transparent, complete and clear information that enables investors to make informed investment decisions ;

2° A detailed memo giving an exact description of the investment rules and operating rules of the collective investment scheme, along with all the procedures for compensating the portfolio management company and the depository. It shall also specify the identity of the portfolio management company and the depository ;

3° The rules or articles of association of the collective investment scheme.

**Article 411-46**

The full prospectus shall describe all the fees paid by the holders or by the collective investment scheme, including all taxes, with information :

1° About the fees paid by holders :

a) The maximum percentage of the subscription or redemption fee that is not kept by the collective investment scheme ;

b) The percentage of the fee that is kept by the collective investment scheme and the conditions under which this percentage may be reduced.

2° About the fees paid by the collective investment scheme, the maximum percentage of the operating and management fees. The information about the percentage must be supplemented, as appropriate, with the following details :

a) The rules for calculating transaction fees ;

b) The rules for calculating the proportion of income from temporary purchases and sales of securities that is not paid to the collective investment scheme ;

c) The maximum fees and commissions that may be paid by collective investment schemes or investment funds as defined in Article R. 214-5 of the Monetary and Financial Code to be kept by the collective investment scheme ;

d) The rules for calculating variable management fees.

3° About the fees actually paid by the collective investment scheme during the previous financial year :

a) Total fees invoiced to the collective investment scheme as a ratio of the mean assets of the collective investment scheme over the previous financial year. This total shall be the sum of the operating and management fees, the fees referred to in a and d of 2°, and the fees actually paid by the collective investment scheme for its investments in collective investment schemes and investment funds ;

b) The aggregate intermediation fees paid on financial instruments as a ratio of the collective investment scheme's assets, along with the portfolio turnover rate.

The presentation of the full prospectus and the procedures for calculating the fees referred to in this Article shall be specified by an AMF instruction.

**Article 411-47**

The full prospectus shall define the valuation rules for each category of financial instruments, deposits, securities and contracts.

Between one calculation of the net asset value and the next, a collective investment scheme may determine and publish an indicative net asset value called "estimated value". The full prospectus shall stipulate the conditions for publishing this value and warn investors that the value may not be used as a basis for subscriptions or redemptions.

Any publication of an estimated value must include this warning.

**Article 411-48**

Prior to the marketing of the units or shares in a collective investment scheme and with a view to authorization, the AMF shall approve the collective investment scheme's full prospectus. The content of the documents comprising the full prospectus and the procedures for submitting them to the AMF shall be set out in an AMF instruction.

If the collective investment scheme is made up of subfunds, the full prospectus shall describe the characteristics of the collective investment scheme and of each of its subfunds.

**Article 411-49**

The portfolio management company shall be solely responsible for the contents of the full prospectus submitted to the AMF for posting on its website.

**SUB-SECTION 2 - DISTRIBUTION RULES****Article 411-50**

The AMF shall be entitled to exercise the prerogatives stipulated in Article 314-30 with regard to any person distributing collective investment schemes.

Advertising about collective investment schemes or their subfunds must mention the simplified prospectus and say where it is available to investors.

#### **Article 411-51**

The simplified prospectus shall be provided prior to any subscription. It shall be provided free of charge through any means.

In the case of a collective investment scheme with subfunds, following the first subscription, an extract from the simplified prospectus dealing only with the subfund being subscribed may be provided, as long as no modifications have been made to the collective investment scheme or its subfunds.

#### **Article 411-52**

At the time of subscription, the procedures shall be explained for obtaining a detailed memo, the FCP rules or the articles of association of the SICAV, the latest annual report and the latest financial statement, as well as, a web address where these documents can be obtained, if appropriate.

These documents must be made available to holders who make a written request within one week of receipt of the request. If the holder chooses, it must be possible to send the documents in electronic form.

At the time of subscription, the procedures shall be explained for obtaining the detailed memo, the FCP rules or the articles of association of the SICAV, the latest annual report and the latest financial statement, as well as, a web address where these documents can be obtained, if appropriate.

#### **Article 411-53**

I. - Notwithstanding the legislative and regulatory provisions applying to the provision of investment advice service, a portfolio management company that markets units or shares in collective investment schemes under its management shall comply with the rules of conduct for order execution services for third parties and a portfolio management company that markets units or shares in collective investment schemes managed by other entities shall comply with the rules of conduct applying to order receiving and transmitting service for third parties.

The requirements for implementing this article shall be specified in an AMF Instruction.

II. - Any person marketing FCP units or SICAV shares or subfund units or shares shall ensure that the investor meets the subscription requirements stipulated in Article 411-11.

When a portfolio management company signs a contract to distribute collective investment scheme units or shares, the contract shall stipulate the requirements for investor access to the detailed memorandum, the FCP rules or the SICAV articles of association, and the collective investment scheme's last annual report and last periodic statement.

#### **Article 411-53-1**

Rebates of management fees or subscription and redemption commissions that arise on investments made by the portfolio management company in shares or units of a collective investment scheme or investment fund on behalf of a collective investment scheme distributed on the territory of the French Republic, whether such rebates are paid to the portfolio management company or to any other person or scheme, are prohibited, with the exception of the following :

1° Fees and commissions referred to in the eighth paragraph of Article 314-79 ;

2° Rebates that exclusively benefit the collective investment scheme ;

3° Rebates paid by the portfolio management company of a master fund in order to remunerate a third party in charge of marketing the feeder funds of this master fund ;

4° Rebates remunerating a third party in charge of marketing collective investment schemes or investment funds where this third party acts independently of the portfolio management company investing in these collective investment schemes or investment funds.

The receipt by the portfolio management company of the following rebates in particular is prohibited :

1° Subscription or redemption commissions relating to investments by the portfolio under management in a collective investment scheme or investment fund ;

2° Management fees relating to investments of the portfolio of a collective investment scheme under management in another scheme or investment fund.

**SUB-SECTION 3 - NET ASSET VALUE****Article 411-54**

Collective investment schemes shall be required to determine their net asset value in accordance with the provisions of Articles 411-27 to 411-33. This net asset value shall be determined and published with a frequency that is suited to the nature of the financial instruments, contracts, securities and deposits held by the collective investment scheme.

Collective investment schemes shall publish the net asset value of their shares or units in an appropriate manner at least twice a month. However, the net asset value of shares or units can be published on a monthly basis, provided this does not impinge on the interests of unitholders or shareholders and subject to prior authorisation from the AMF.

The prospectus referred to in Article 411-45 shall specify the frequency with which the net asset value is compiled and published, as well as the reference calendar chosen.

Once the net asset value has been published, subscriptions and redemptions of units and shares in collective investment schemes must be carried out on the basis of this value, under the conditions set out in the full prospectus.

This Article shall apply to each subfund.

**Article 411-55**

Collective investment schemes with units or shares listed for trading on a regulated market that operates on a regular basis shall compile and publish their net asset value each day that the market on which they are listed is open for trading.

This Article shall apply to each subfund.

**Article 411-56**

Collective investment schemes that are general-purpose products must compile an offering circular at the end of each half-year. The content of the circular shall be defined in an AMF instruction.

Offering circulars shall be published within eight weeks following the end of every period defined in the detailed memo.

If the collective investment scheme is made up of subfunds, periodical offering circulars shall also be compiled for each subfund.

With the exception of the dedicated collective investment schemes mentioned in point 1° of Article 411-12, general-purpose collective investment schemes with assets of more than EUR 80 million shall have the composition of their assets certified quarterly by the scheme's statutory auditor.

**SUB-SECTION 4 - SPECIAL DISTRIBUTION RULES APPLICABLE TO THE ADMISSION TO TRADING ON REGULATED MARKET****Article 411-56-1**

The shares or units of a collective investment scheme whose management objective is based on an index may be admitted to trading on regulated market. These are :

1° Shares or units of index-based collective investments schemes governed by sub-section 8 of section 1 of Chapter IV of Title I of Book II of the regulatory part of the Monetary and Financial Code ;

2° Shares or units of a collective investment scheme whose management objective is to replicate the result obtained by applying a mathematical formula called an "algorithm" to an index complying with the conditions set out in point II of Article R. 214-28 of the Monetary and Financial Code ;

3° Shares or units of a collective investment scheme mentioned in 1° or 2° whose distribution is authorised in France pursuant to Part I of Article D. 214-1 of the Monetary and Financial Code.

The algorithm includes one or more parameters that may vary over time and that are called "variables".

The algorithm, the index and conditions for adjusting the variables shall be described in the full prospectus and set in a way that is compatible with the proper information of the public.

**Article 411-56-2**

Where the shares or units of a collective investment scheme are admitted to trading on a regulated market :

I. - The portfolio management company shall disclose to the public :

1° The results of the algorithm in accordance with the timetable described in the prospectus ;

2° Any adjustment of the variables of the algorithm. This disclosure shall take place no later than seven business days before the implementation of the adjustment.

3° By way of derogation from 2°, where one or more variables are adjusted automatically by application of objective criteria and according to a timetable described in the full prospectus, the public shall be informed no later than seven business days following the implementation of the adjustments.

The portfolio management company shall ensure the effective and complete disclosure of the information referred to in points 1°, 2° and 3°. It shall also post such information on its website.

II. - The full prospectus for the collective investment schemes referred to in Article 411-56-1 shall also include specific information related to the admission to trading on a regulated market, in accordance with the conditions set out in an AMF instruction.

The full prospectus shall be made public no later than the day on which the market operator issues a notice announcing the admission to trading of the shares or units of the collective investment scheme.

In practice, the prospectus shall be distributed in one of the following ways :

1° the simplified prospectus shall be published in at least one daily newspaper with nationwide circulation that covers economic and financial news ;

2° the full prospectus shall be made available free of charge at the registered office of the portfolio management company and by those institutions appointed by this company. A summary of the prospectus, published under the same conditions as in point 1°, or a news release, disseminated in full by the portfolio management company, shall specify how and where the full prospectus has been made available.

A copy of the full prospectus must be sent free of charge to any person who requests it and an electronic version of the prospectus is published on the website of the portfolio management company and must be sent to the AMF for posting on its website.

III. - The accounting documents referred to in article L. 214-8 of the Monetary and Financial Code shall be published in accordance with the conditions set out in an AMF instruction.

## **Section 4 - Marketing foreign collective investment schemes in France**

### **SUB-SECTION 1 - UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS)**

#### **Article 411-57**

An application shall be submitted for the prior authorization of the AMF for the marketing of harmonised funds (Undertakings for Collective Investment in Transferable Securities, UCITS) from other Member States of the European Community or from States party to the European Economic Area (EEA) agreement and that are eligible for the mutual authorization recognition procedure provided for under the provisions of Directive 85/611/EEC of 20 December 1985. The application shall include the elements stipulated in an AMF instruction. This instruction shall also stipulate the procedure to be followed and the information to be submitted after marketing has been authorised.

These UCITS shall be required to file an offering circular approved by their home country authorities and translated into French before accepting any subscriptions. Soliciting members of the public on behalf of the UCITS shall be subject to the same provisions as those applicable to other collective investment schemes.

#### **Article 411-58**

The marketing application referred to in Article 411-57 shall be sent to the AMF by registered letter with acknowledgement of receipt.

If the AMF does not make any observations, marketing in France shall be authorised two months after the issue of a receipt certifying the official filing of the marketing application. These provisions shall also apply for marketing a new subfund of a UCITS that has already been authorised for marketing in France.

#### **Article 411-59**

The foreign UCITS shall name one or more correspondents, including a centralising correspondent, that are established in France under the conditions set out by an AMF instruction.

The correspondent(s) shall belong to one of the categories referred to in Article 1 of the ministerial order of 6 September 1989.

The correspondent(s) shall be under contract to provide the following financial services :

- 1° Processing subscription and redemption requests ;
- 2° Paying coupons and dividends ;
- 3° Making offering circulars available to investors ;
- 4° Providing specific information to holders in the cases to be stipulated by an AMF instruction.

The centralising correspondent shall be responsible for payment of the fixed annual fee, in accordance with Article L. 621-5-3 of the Monetary and Financial Code.

## **SUB-SECTION 2 - OTHER FOREIGN COLLECTIVE INVESTMENT SCHEMES**

### **Article 411-60**

An application shall be submitted for the prior authorization of the AMF in accordance with the conditions set out in an AMF instruction for the marketing of collective investment schemes from countries that are not Member States of the European Community or from States not party to the EEA agreement and for the marketing of collective investment schemes from Member States of the European Community or from States party to the EEA agreement but that are not eligible for the mutual authorization recognition procedure provided for under the provisions of Directive 85/611/EEC of 20 December 1985.

The instruction shall stipulate the procedure to be followed and the information to be submitted after marketing has been authorised.

## **SUB-SECTION 3 - COMMON REQUIREMENTS**

### **Article 411-61**

The provisions of Articles 411-50, 411-53 and 411-53-1 shall apply to the marketing of the collective investment schemes referred to in Articles 411-57 and 411-60.

The request for authorization to distribute a collective investment scheme referred to in articles 411-57 et 411-60 on the territory of the French Republic includes an attestation by the portfolio management company that the scheme complies with the provisions of article 411-53-1.

## **CHAPTER II - MASTER FUNDS AND FEEDER FUNDS**

### **Article 412-1**

The provisions applying to all the collective investment schemes referred to in Chapter I of this Title shall apply to master funds and feeder funds.

These funds shall also be subject to the following provisions.

### **Section 1 - Disclosures and supervision**

#### **Article 412-2**

The holders of units or shares in a feeder fund shall receive information and treatment that are equivalent to what they would receive if they held units or shares in the master fund.

#### **Article 412-3**

Prior to the authorization of a feeder fund, the persons responsible for the statutory audit of French or foreign feeder fund and master fund financial statements shall sign an information-sharing agreement. An agreement shall also be signed between the master fund and feeder fund depositories.

These agreements shall stipulate the information-sharing procedures necessary for discharging the respective duties of the depository and the persons responsible for the statutory audit of the feeder fund and master fund financial statements.

These agreements shall stipulate the time limits and requirements for submitting annual documents, periodical statements, certified inventories, reports on mergers, demergers, contributions in kind and liquidations relating to the master fund. The agreements shall stipulate the information about the master fund's exposure to be provided,

as appropriate, by the depository or by the person responsible for the statutory audit of the master fund's financial statements, to, respectively, the depository and the person responsible for the statutory audit of the feeder fund's financial statements.

The person responsible for the statutory audit of the feeder fund's financial statements shall make any remarks that it deems necessary with regard to the documents referred to in the third paragraph of this Article.

These remarks shall be submitted to the person responsible for the statutory audit of the master fund's accounts for the response that the latter deems necessary.

#### **Article 412-4**

When the master fund and the feeder fund have the same depository, the latter shall draw up specifications to define, as appropriate, adequate adaptations of audit procedures for the master fund and the feeder fund. When the same person is responsible for the statutory audit of the master fund and of the feeder fund, it shall draw up a work programme that incorporates the same adaptations, as appropriate.

The agreements or contract specifications shall define the requirements incumbent upon the master fund depository with regard to informing, as appropriate, the depository and the portfolio management company of the feeder fund, about anomalies detected in the performance of its tasks and the responses to this information.

The full prospectus of the feeder fund shall define the procedures for making the rules or articles of association of the master fund available to holders.

If the master fund is not subject to Section 1 of Chapter IV of Title I of Book II of the Monetary and Financial Code, the authorization for the feeder fund can only be granted if the master fund is subject to the supervision of foreign authority with which the AMF has signed an information-sharing and assistance agreement that is suited to the supervision of master funds and feeder funds under the conditions stipulated in Article L. 621-21 of the Monetary and Financial Code. Authorization of the feeder fund shall require marketing authorization for the master fund in France in accordance with Article 411-57 and the following Articles.

### **Section 2 - Full prospectus**

#### **Article 412-5**

The full prospectus of a feeder fund shall specify that the fund's assets are completely and permanently invested in units or shares of a single collective investment scheme called the master fund and occasionally in cash deposits held within the strict limits of the needs relating to managing the fund's flows. As appropriate, the full prospectus shall also specify that the feeder fund may sign contracts constituting financial futures under the conditions defined in point II of Article R. 214-24 of the Monetary and Financial Code.

In the event of changes to the master fund, the fund's full prospectus must be amended accordingly.

A feeder fund may not hold units or shares in another feeder fund.

The rules set out in this Article shall apply to each subfund of a feeder fund and each subfund of a master fund.

### **Section 3 - Mergers, demergers, takeovers, liquidation**

#### **Article 412-6**

If a master fund is affected by a merger, demerger or a takeover, the resulting changes for the feeder fund shall be subject to the authorization of the AMF.

A refusal to authorise the changes concerning the feeder fund(s) shall lead to the winding up of the funds, unless they invest their assets in another master fund on or before the date on which the abovementioned transactions are definitively carried through.

Holders of a feeder fund shall receive the same information and be offered the same possibilities to exit the fund free of charge as specified by an instruction for the holders of units or shares in a collective investment scheme in the event of a merger, demerger or takeover, as well as, more generally, the information and possibilities offered to the holders of units in the master fund.

#### **Article 412-7**

Liquidation of a master fund shall lead to liquidation of the feeder fund, unless the latter invests its assets in another master fund before the end of the liquidation process. The investment shall be subject to the authorization of the AMF.

Holders of units or shares in a feeder fund shall receive the same information and the same protection as provided for the holders of units or shares in a collective investment scheme in the event of liquidation, as well as, more generally, the information and protection offered to the holders of units or shares in the master fund.

#### **Article 412-8**

The agreement and work programme referred to in Article 412-3 shall give due consideration to the procedures for transmitting the documents referred to in Article 411-40 to the portfolio management company of the feeder fund or the feeder fund SICAV to ensure that the holders of the feeder fund benefit from the provisions of Article 411-40.

#### **Article 412-9**

If a collective investment scheme is a feeder fund, the full prospectus shall draw attention to this fact and describe the characteristics of the master fund or the master subfund.

If a feeder fund engages in futures transactions, the full prospectus must be adapted to provide information that is consistent with its management objective.

### **CHAPTER III - COLLECTIVE INVESTMENT SCHEMES RESERVED FOR CERTAIN INVESTORS**

#### **Section 1 - Leveraged and unleveraged collective investment schemes with streamlined investment rules**

##### **Article 413-1**

The provisions applying to all collective investment schemes set out in Chapter 1 of this Title shall apply to collective investment schemes with streamlined investment rules referred to in subparagraphs 1 and 2 of paragraph 1 of sub-section 9 in Section 1 of Chapter VI, Title 1, Book II of the regulatory part of the Monetary and Financial Code, except for the second and third paragraphs of Article 411-54.

The collective investment schemes shall also be subject to the following provisions.

##### **Paragraph 1 - Subscription and purchase requirements**

##### **Article 413-2**

Subscriptions and purchases of units or shares in collective investment schemes with streamlined investment rules referred to in subparagraphs 1 and 2 of paragraph 1 of sub-section 9 in Section 1 of Chapter VI, Title 1, Book II of the regulatory part of the Monetary and Financial Code shall be reserved for :

- 1° Investors referred to in the first paragraph of Article L. 214-35-1 of the Monetary and Financial Code ;
- 2° The central government, or in the case of a federal system, one or more of the members making up the federation ;
- 3° The European Central Bank, central banks, the World Bank, the International Monetary Fund, the European Investment Bank ;
- 4° Investors whose initial subscription is EUR 10,000 or more and who have held a professional position in the financial sector for at least one year that has enabled them to acquire knowledge about the strategy implemented by the collective investment scheme that they are considering subscribing to ;
- 5° To corporations that met two of the following three criteria at the end of the previous financial year :
  - a) Total balance-sheet assets of more than EUR 20,000,000 ;
  - b) Turnover of more than EUR 40,000,000 ;
  - c) Shareholders' equity of more than EUR 2,000,000.
- 6° Investors whose initial subscription is EUR 10,000 or more and who hold a total of EUR 1,000,000 or more in deposits, life insurance products or financial instruments ;
- 7° Investors whose initial subscription is EUR 125,000 or more.



**Article 413-3**

If a non-resident of France subscribes or purchases units or shares in collective investment schemes with streamlined investment rules marketed in other countries, the investors for whom subscriptions and purchases of these collective investment schemes are reserved and the conditions under which they can waive their right to advice shall be governed by the law of the country in which the marketing takes place.

**Article 413-4**

*(Deleted by the Order of 18 March 2008)*

**Article 413-5**

Any direct or indirect solicitations for subscriptions and purchases of units or shares in collective investment schemes with streamlined investment rules shall come with a warning that subscriptions and purchases of units or shares in these collective investment scheme, made directly or through an intermediary, are reserved for the investors referred to in Article 413-2. The warning shall also state that the collective investment scheme may adopt special investment rules.

**Article 413-6**

Investors shall give written acknowledgement, when making the first subscription or purchase, that they have been warned that subscriptions and purchases of units or shares in these collective investment scheme, made directly or through an intermediary, are reserved for the investors referred to in Article 413-2.

**Article 413-7**

The depository, or the person named in the full prospectus of the collective investment scheme, shall ensure that subscribers or purchasers meet the eligibility criteria and that they have received the information required under the provisions of Articles 413-5 and 411-51.

They shall also ensure that the written acknowledgement referred to in Article 413-6 exists.

**Article 413-8**

Between the date at which the subscription or redemption order is centralised and the date at which the depository settles or delivers the units or shares on behalf of the collective investment scheme, the full prospectus of the scheme may provide for a period that shall not exceed :

1° Fifteen days where the net asset value is established daily ;

2° Sixty days where the net asset value is not established daily.

The full prospectus must indicate the date of centralisation of the subscription and redemption order for the collective investment scheme's units or shares, the date of establishment of the net asset value and the latest date by which the net asset value will be calculated and published.

The net asset value must be calculated and published at the same date.

**Article 413-9**

The management fee for collective investment schemes with streamlined investment rules governed by subparagraphs 1 and 2 of paragraph 1 of sub-section 9 in Section 1 of Chapter VI, Title 1, Book II of the regulatory part of the Monetary and Financial Code may include a variable component that is paid as soon as the first euro of positive performance is posted. The procedures for calculating and paying the fee shall be explained in the full prospectus.

**Paragraph 2 - Net asset value****Article 413-10**

The full prospectus of the collective investment scheme shall stipulate that the net value shall be published at least once a month.

**Article 413-11**

If a collective investment scheme is marketed exclusively outside of France, the full prospectus may be written in a language other than French that is customary in the sphere of finance.

## Section 2 - Alternative funds of funds with streamlined investment rules

### Article 413-12

The provisions applying to all collective investment schemes set out in Chapter 1 of this Title shall apply to collective investment schemes with streamlined investment rules referred to in subparagraph 3 of paragraph 1 of sub-section 9 of Section 1 of Chapter IV, Title I, Book II of the regulatory part of the Monetary and Financial Code, except for the second and third paragraphs of Article 411-54.

These collective investment schemes shall also be subject to the following provisions.

### Paragraph 1 - Subscription and purchase requirements

### Article 413-13

Subscriptions and purchases of units or shares in collective investment schemes referred to in subparagraph 3 of paragraph 1 of sub-section 9 of Section 1 of Chapter IV, Title I, Book II of the regulatory part of the Monetary and Financial Code shall be reserved for :

- 1° Investors referred to in the first paragraph of Article L. 214-35-1 of the Monetary and Financial Code ;
- 2° The central government, or in the case of a federal system, one or more of the members making up the federation ;
- 3 The European Central Bank, central banks, the World Bank, the International Monetary Fund, the European Investment Bank ;
- 4° Companies that met two of the following three criteria at the end of the previous financial year :
  - a) Total balance-sheet assets of more than EUR 20,000,000 ;
  - b) Turnover of more than EUR 40,000,000 ;
  - c) Shareholders' equity of more than EUR 2,000,000 ;
- 5° Investors whose initial subscription is EUR 10,000 or more, if the collective investment scheme does not guarantee the capital subscribed ;
- 6° Any investor, if the collective investment scheme guarantees the capital subscribed and benefits from a guarantee itself, or provides holders with a guarantee.

### Article 413-14

*(Deleted by the Order of 18 March 2008)*

### Article 413-15

If a non-resident of France subscribes or purchases units or shares in alternative funds of funds marketed in other countries, the investors for whom subscriptions and purchases of these collective investment schemes are reserved and the conditions under which they can waive their right to advice shall be governed by the law of the country in which the marketing takes place.

### Article 413-16

Any direct or indirect solicitations for subscriptions and purchases of units or shares in alternative funds of funds shall come with a warning that subscriptions and purchases of units or shares in the collective investment schemes, made directly or through an intermediary, are reserved for the investors referred to in Article 413-13. The warning shall also state that the collective investment scheme may adopt special investment rules.

### Article 413-17

Investors shall give written acknowledgement, when making the first subscription or purchase, that they have been warned that subscriptions and purchases of units or shares in alternative funds of funds, made directly or through an intermediary, are reserved for the investors referred to in Article 413-13.

### Article 413-18

The depository, or the person named in the full prospectus of the alternative fund of funds, shall ensure that subscribers or purchasers meet the eligibility criteria and that they have received the information required under the

provisions of Articles 413-16 and 411-51. They shall also ensure that the written acknowledgement referred to in Article 413-17 exists.

#### **Article 413-19**

Between the date at which the subscription or redemption order is centralised and the date at which the depository settles or delivers the units or shares on behalf of the collective investment scheme, the full prospectus of the scheme may provide for a period that shall not exceed :

- 1° Fifteen days where the net asset value is established daily ;
- 2° Sixty days where the net asset value is not established daily.

The full prospectus must indicate the date of centralisation of the subscription and redemption order for the collective investment scheme's units or shares, the date of establishment of the net asset value and the latest date by which the net asset value will be calculated and published.

The net asset value must be calculated and published at the same date.

#### **Article 413-20**

The management fee for collective investment schemes with streamlined investment rules governed by subparagraph 3 of paragraph 1 of sub-section 9 of Section 1 of Chapter IV, Title I, Book II of the regulatory part of the Monetary and Financial Code may include a variable component that is paid as soon as the first euro of positive performance is posted. The procedures for calculating and paying this fee shall be explained in the full prospectus.

### **Paragraph 2 - Net asset value**

#### **Article 413-21**

The full prospectus of the alternative fund of funds shall stipulate that the net value shall be published at least once a month.

## **Section 3 - Contractual funds**

#### **Article 413-22**

Contractual funds governed by Article L. 214-35-2 and the following Articles of the Monetary and Financial Code shall be subject to the provisions of this section.

### **SUB-SECTION 1 - FORMATION**

#### **Article 413-23**

The registration requirement stipulated by Article L. 214-35-4 of the Monetary and Financial Code shall be met by filing an application with the AMF that contains the elements stipulated in an AMF instruction. The registration must take place in the month following the issuance of the deposit certificate for the collective investment scheme or subfund referred to in Article 411-7-2.

An acknowledgement of receipt of the registration shall be sent within eight business days following such receipt.

#### **Article 413-24**

No subscriptions can be accepted until the full prospectus for the collective investment scheme has been produced. The full prospectus shall be given to subscribers before any subscriptions or purchases of units or shares are made.

#### **Article 413-25**

The full prospectus shall comprise the following documents and the headings of these documents shall be stipulated by an AMF instruction :

- 1° A detailed memo that identifies the portfolio management company and depository, and provides a description of the investment rules and operating rules of the collective investment scheme, along with all the direct and indirect procedures for compensating the portfolio management company and the depository ;
- 2° The rules or articles of association of the collective investment scheme.

**Article 413-26**

If a collective investment scheme is marketed exclusively outside of France, the full prospectus may be written in a language other than French that is customary in the sphere of finance.

**Article 413-27**

The full prospectus shall explicitly state that the collective investment scheme is a contractual fund that is not subject to the authorization of the AMF.

**Article 413-28**

Articles 411-3, 411-4, the fifth paragraph of Article 411-7, and Articles 411-8 and 411-11 shall apply to contractual funds.

**SUB-SECTION 2 - OPERATING PROCEDURES****Article 413-29**

The AMF shall have the right to exercise the prerogatives stipulated in Article 314-30 with regard to any person distributing contractual funds.

Advertising about contractual funds or collective investment schemes with subfunds must mention the simplified prospectus and say where it is available to investors.

**Article 413-30**

The management fee for contractual funds may include a variable component that is paid as soon as the first euro of positive performance is posted. The calculation and payment procedures shall be explained in the full prospectus.

**Article 413-31**

Articles 411-53, 411-53-1 and 411-56 shall apply to contractual funds.

**Article 413-32**

The procedures and frequency of net asset value calculations shall be suited to the nature of the financial instruments, contracts, securities and deposits held by the collective investment scheme. However, the full prospectus of the collective investment scheme shall stipulate that its net value shall be determined and published at least once a quarter.

**Article 413-33**

The AMF shall be notified of the conversion, merger, demerger or liquidation of the contractual fund within one month of the implementation of the conversion in accordance with the procedures defined by an AMF instruction.

The modification shall go into effect no earlier than three business days following the effective disclosure of the information to the holders of the shares or units of the collective investment scheme.

In the event of an amendment to the prospectus, the SICAV or the portfolio management company must submit an updated prospectus on or before the date that the amendment enters into force, in accordance with the procedures defined by an AMF instruction. The submission of the prospectus shall not exempt the SICAV or the portfolio management company from entering the necessary changes in the GECO database, as appropriate.

**Article 413-34**

Article 411-14 shall apply to contractual funds.

**SUB-SECTION 3 - SUBSCRIPTIONS, PURCHASES, REDEMPTIONS AND TRANSFERS****Article 413-35**

FCP units and SICAV shares shall be issued at any time at the request of the unit holders and shareholders on the basis of their net asset value, plus any subscription fees.

However, subscriptions and purchases of units or shares in contractual funds shall be reserved for :

1° Investors referred to in Article L. 214-35-3 of the Monetary and Financial Code ;

2° The central government, or in the case of a federal system, one or more of the members making up the federation ;

3° The European Central Bank, central banks, the World Bank, the International Monetary Fund, the European Investment Bank ;

4° Investors whose initial subscription is EUR 30,000 or more and who have held a professional position in the financial sector for at least one year that has enabled them to acquire knowledge about the strategy implemented by the collective investment scheme that they are considering subscribing to ;

5° Companies that met two of the following three criteria at the end of the previous financial year :

a) Total balance-sheet assets of more than EUR 20,000,000 ;

b) Turnover of more than EUR 40,000,000 ;

c) Shareholders' equity of more than EUR 2,000,000 ;

6° Investors whose initial subscription is EUR 30,000 or more and who hold a total of EUR 1,000,000 or more in deposits, life insurance products or financial instruments ;

7° Investors whose initial subscription is EUR 250,000 or more.

#### **Article 413-35-1**

By way of derogation to Article 411-35, a contractual collective investment scheme split off from another scheme may be opened to any holder of units or shares of the original scheme whenever the following conditions are met :

1° The split is made for the purpose of segregating certain assets that, if kept within the original scheme, would prevent that scheme from meeting its redemption obligations on terms compatible with the interest of its shareholders or unitholders ;

2° The contractual collective investment scheme does not issue new units or shares and is managed in run-off mode, aiming to dispose of the assets on terms compatible with the interest of its shareholders or unitholders.

Article 411-14 shall not apply to a contractual collective investment scheme formed pursuant to this article.

#### **Article 413-36**

If a non-resident of France subscribes or purchases units or shares in contractual funds marketed in other countries, the investors for whom subscriptions and purchases of these collective investment schemes are reserved and the conditions under which they can waive their right to advice shall be governed by the law of the country in which the marketing takes place.

#### **Article 413-37**

*(Deleted by the Order of 18 March 2008)*

#### **Article 413-38**

Any direct or indirect solicitations for subscriptions and purchases of units or shares in contractual funds shall come with a warning that subscriptions or purchases, and sales or transfers of units or shares in the collective investment scheme, made directly or through an intermediary, are reserved for the investors referred to in Article 413-35. The warning shall also state that the collective investment scheme is not authorised by the AMF and that its operating rules are defined in the full prospectus.

#### **Article 413-39**

The full prospectus shall be given to investors before any subscriptions or purchases of units or shares in a contractual fund are made.

Investors shall give written acknowledgement, when making the first subscription or purchase, that they have been warned that subscriptions and purchases of units or shares in the collective investment scheme, made directly or through an intermediary, are reserved for the investors referred to in Article 413-35.

The full prospectus of the collective investment scheme as well as the most recent periodic and yearly documents must be available on a simple written request by the holder within one week of receipt of the request. At the holder's option, these documents must be capable of being sent electronically.

**Article 413-40**

The depository, or the person named in the full prospectus of the collective investment scheme, shall ensure that subscribers or purchasers meet the eligibility criteria and that they have received the information required under the provisions of Articles 413-38 and 413-39. They shall also ensure that the written acknowledgement referred to in Article 413-39 exists.

**SUB-SECTION 4 - PROVISIONS APPLICABLE SPECIFICALLY TO COLLECTIVE INVESTMENT SCHEMES FORMED FROM A SPLIT IN ORDER TO HOUSE ASSETS WHOSE DISPOSAL WOULD NOT BE IN THE BEST INTERESTS OF HOLDERS OF SHARES OR UNITS IN THE SPLIT SCHEMES**

**Article 413-41**

Subject to the following provisions, the provisions referred to in this section that are common to all contractual schemes shall apply to all contractual schemes formed in accordance with the second paragraph of Article L. 214-19 or the second paragraph of Article L. 214-30 of the Monetary and Financial Code in order to house the assets whose disposal would not be in the best interests of the holders of shares or units of the scheme.

**Article 413-42**

Article 413-32 does not apply to the scheme governed by this subsection.

The full prospectus of the scheme governed by this subsection shall specify the frequency, which must be at least quarterly, for disseminating the estimated value of the scheme's assets. The procedures and frequency for calculating the estimated asset value shall be appropriate to the type of assets held by the scheme.

**Article 413-43**

Article 411-14 does not apply to schemes governed by this subsection.

**Article 413-44**

All holders of shares or units in a scheme split pursuant to the second paragraph of Article L. 214-19 or the second paragraph of Article L. 214-30 of the Monetary and Financial Code may hold the shares or units in the scheme governed by this subsection that are reserved for them when the split is made.

The holders of shares or units in the scheme governed by this subsection can sell such shares and units only to the persons referred to in Article 413-35.

**CHAPTER IV - VENTURE CAPITAL FUNDS (FONDS COMMUNS DE PLACEMENT À RISQUES)**

**Section 1 - Common provisions**

**Article 414-1**

The provisions applying to all collective investment schemes set out in Chapter 1 of this Title shall apply to venture capital funds (fonds communs de placement à risques, FCPRs) governed by Article L. 214-36 of the Monetary and Financial Code, including innovation funds (fonds communs de placement dans l'innovation, FCPIs) governed by Article L. 214-41 of the Monetary and Financial Code and local investment funds (fonds d'investissement de proximité, FIPs) governed by Article L. 214-41-1 of the same code, except for the second through fourth paragraphs of points I and II of Article 411-7, Article 411-12 and Article 411-18.

These funds shall also be subject to the following provisions.

**SUB-SECTION 1 - FORMATION AND AUTHORIZATION**

**Article 414-2**

Authorization of a venture capital fund and, as appropriate, of each subfund shall be subject to prior filing of an application with the AMF that contains the elements stipulated in an AMF instruction.

Absent a response from the AMF for one month following acknowledgement of receipt of the application by the AMF, authorization is deemed granted.

If the AMF asks for further information that requires the portfolio management company to submit a supplementary information sheet, the AMF shall serve written notice stipulating that the items requested must arrive within forty-five

days. If it fails to receive the elements within this period, the application for authorization shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the information requested. The acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than the one stipulated in the second paragraph.

#### **Article 414-3**

The venture capital fund rules may provide for categories of units that carry different rights pertaining to the net assets and income of the venture capital fund.

#### **Article 414-4**

The venture capital fund rules shall define the rights attached to the different categories of units, the management guidelines and the rules that the portfolio management company follows if the venture capital fund reserves the right to purchase or transfer securities that are in portfolios managed or advised by the portfolio management company or its affiliates.

An AMF instruction shall stipulate the contents of the headings in the venture capital fund rules.

#### **Article 414-5**

Holders of units in a feeder venture capital fund that always invests all its assets in a venture capital fund shall be explicitly informed of the special rules applying to this type of feeder fund. An AMF Instruction shall stipulate the procedures for such disclosures.

### **SUB-SECTION 2 - OPERATING RULES**

#### **Article 414-6**

An AMF instruction shall stipulate the conditions under which the AMF shall authorise transfers affecting a venture capital fund. The time limit for granting authorization shall be fifteen days.

#### **Article 414-7**

Venture capital funds shall be permitted to make or receive contributions in kind other than the ones stipulated in the first paragraph of Article 411-16. If the contribution is made between a venture capital fund and a company affiliated to the portfolio management company of the fund or between venture capital funds managed by the same portfolio management company, the contributions must not involve equity or debt securities that have been held for more than twelve months. These contributions shall be valued in accordance with the conditions stipulated in the venture capital fund rules.

#### **Article 414-8**

A venture capital fund, an innovation fund or a local investment fund shall only be permitted to merge with another venture capital fund, innovation fund or local investment fund, respectively.

#### **Article 414-9**

In the event of a merger, demerger or takeover involving one or more venture capital funds or subfunds, holders of units in the venture capital fund shall have three months in which to redeem their units or shares free of charge.

This option shall not apply to holders of units in venture capital funds during the period stipulated in point 7 of Article L. 214-36 of the Monetary and Financial Code.

#### **Article 414-10**

If a venture capital fund issues different units, the net asset value of each type of unit issued when the subscription price is fully or partially paid, or when later payments are made, shall be obtained by dividing the portion of net assets corresponding to the type of units in question by the number of units with the same characteristics. The calculation procedures shall be explained in the venture capital fund information circular and rules.

#### **Article 414-11**

The net amount of fees paid to the portfolio management company for providing advice to companies in which a venture capital fund holds securities shall be deducted from the fee to which the portfolio management company is entitled for managing the fund in proportion to the equity held.

An AMF instruction shall stipulate the conditions for applying the provisions of this Article.

**SUB-SECTION 3 - PUBLIC INFORMATION****Article 414-12**

The full prospectuses of venture capital funds shall consist of two documents : the information circular and the fund rules. The contents of these documents, and information about fees in particular, shall be stipulated by an AMF instruction.

If the venture capital funds provide for the distribution of so-called carried interest units under the conditions set out in the third and fourth paragraphs of point II of Article R. 214-47 of the Monetary and Financial Code, the fund rules must describe the characteristics of these units, the risks incurred by holders of such units and the nature of these holders, if they are not exclusively the portfolio management company, its executives and employees.

**Article 414-13**

The venture capital fund rules may stipulate that the venture capital fund publishes its net asset value only twice a year.

**Section 2 - Venture capital funds registered via the fast-track procedure****Article 414-14**

Venture capital funds registered via the fast-track procedure (fast-track venture capital funds) governed by Article L. 214-37 of the Monetary and Financial Code shall be subject to the provisions of this section.

**SUB-SECTION 1 - FORMATION****Paragraph 1 - Registration and subscriptions****Article 414-15**

The registration requirement stipulated by Article L. 214-37 of the Monetary and Financial Code shall be met by filing an application with the AMF that contains the elements stipulated in an AMF instruction. The registration must take place in the month following the issuance of the deposit certificate provided for in Article 414-17.

**Article 414-16**

No subscriptions can be accepted until the fast-track venture capital fund rules have been established.

**Article 414-17**

Article 411-8 and the second and third paragraphs of Article 411-9 shall apply.

The fast-track venture capital fund rules shall explicitly state that it is a fund registered via the fast-track procedure and that it is not subject to the authorization of the AMF.

The rules that the portfolio management company follows in allocating investments between portfolios that it or its affiliates manage or advise do not have to be explained in the fund rules if the allocation rules are given to subscribers. An AMF instruction shall stipulate the conditions for applying the provisions of this paragraph.

**Article 414-17-1**

When a fast-track venture capital fund is marketed exclusively outside of France, the rules may be drafted in a language that is customary in the sphere of finance, other than French.

**Paragraph 2 - Master funds and feeder funds****Article 414-18**

The provisions of Articles 411-24, 411-48, 412-2 to 412-9 and 414-5 shall apply, with the exception of the AMF authorization, to be replaced by a filing with the AMF in the month following the completion of the transaction or the event.

If the master fund is not subject to the applicable provisions of the Monetary and Financial Code, marketing of the master fund in France must be authorised prior to marketing the feeder fund under the conditions stipulated in Article 411-60.



**SUB-SECTION 2 - OPERATING RULES****Paragraph 1 - Minimum asset amount****Article 414-19**

The provisions of Article 411-14 shall apply to fast-track venture capital funds.

**Paragraph 2 - Fast-track venture capital funds with subfunds****Article 414-20**

If the fast-track venture capital fund rules stipulate that the fund shall be made up of subfunds, new subfunds shall be registered under the conditions stipulated in Article 414-15. Changes to the subfunds must be reported to the AMF in the month following their completion.

**Paragraph 3 - Contributions in kind****Article 414-21**

The provisions of Articles 411-16 and 414-7 shall apply, with the exception of the second sentence in Article 414-7.

**Paragraph 4 - Mergers, demergers, takeovers, liquidation, conversions and changes****Article 414-22**

The provisions of Articles 411-19 to 411-23, 412-6, 414-8 and 414-9 shall apply.

Mergers and demergers shall be reported in the month following their completion. The reporting requirement shall be satisfied by sending the AMF the merger or demerger agreement, along with the statutory auditors' reports.

**Article 414-23**

The provisions of Articles 411-24, 411-25 and 412-7 shall apply.

Liquidations shall be reported in the month following the decision made by the portfolio management company of the fast-track venture capital fund.

The statutory auditor's report shall be sent to the AMF within a month of being produced.

**Article 414-24**

A fast-track venture capital fund may be transformed into a collective investment scheme of another type, with the authorization of the AMF and provided that it complies beforehand with the provisions of the Monetary and Financial Code that apply to the chosen category of collective investment scheme.

**Article 414-25**

An AMF instruction shall stipulate which changes must be reported to the AMF in the month following their completion, along with the procedures for informing holders.

**SUB-SECTION 3 - ACCOUNTING AND FINANCIAL PROVISIONS****Article 414-26**

The provisions of Articles 411-27 to 411-33, 411-36 to 411-41, 411-44 and 412-8 shall apply.

**SUB-SECTION 4 - SUBSCRIBER INFORMATION, REDEMPTION, SUBSCRIPTION AND TRANSFER CONDITIONS****Article 414-27**

I. - Subscriptions and purchases of units or shares of fast-track venture capital funds shall be reserved for :

1° Investors referred to in the first paragraph of Article L. 214-37 of the Monetary and Financial Code ;

2° The central government, or in the case of a federal system, one or more of the members making up the federation ;

3° The European Central Bank, central banks, the World Bank, the International Monetary Fund, the European Investment Bank ;

4° Investors whose initial subscription is EUR 30,000 or more and who have held a professional position in the financial sector for at least one year that has enabled them to acquire knowledge about the strategy implemented by the collective investment scheme that they are considering subscribing to ;

5° Corporate and individual investors whose initial subscription is for at least EUR 30,000 and who meet one of the following three conditions :

a) They provide technical or financial assistance to unlisted companies covered by the fund's purpose to promote their creation or growth ;

b) They provide assistance to the portfolio management company of the fast-track venture capital fund in finding potential investors or contribute towards the company's objectives in seeking, selecting, tracking and disposing of investments ;

c) They have acquired knowledge about investment capital by being a direct equity investor in unlisted companies or by subscribing to a venture capital fund that is not advertised or promoted, or a fast-track venture capital fund, or else an unlisted venture capital firm ;

6° Investors whose initial subscription is EUR 30,000 or more and who hold a total of EUR 1,000,000 or more in deposits, life insurance products or financial instruments ;

7° Companies that met two of the following three criteria at the end of the previous financial year :

a) Total balance-sheet assets of more than EUR 20,000,000 ;

b) Turnover of more than EUR 40,000,00 ;

c) Shareholders' equity of more than EUR 2,000,000.

8° Investors whose initial subscription is EUR 500,000 or more.

The thresholds referred to in point I shall not apply to executives, employees and individuals acting on behalf of the portfolio management company, if the fund is a fast-track venture capital fund.

II. - Any direct or indirect solicitations for subscriptions and purchases of units in fast-track venture capital funds must come with a warning that subscriptions or purchases, and sales or transfers of units in the venture capital fund, made directly or through an intermediary, are reserved for the eligible investors as defined in Article L. 411-2 of the Monetary and Financial Code and Articles D. 411-1, D. 411-2, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the same code and other investors referred to in point I. The warning shall also state that the venture capital fund is not authorised by the AMF and may adopt special investment rules.

III. - Before subscriptions or purchases of units in a fast-track venture capital fund can take place, the fund rules, along with any information provided for by the third paragraph of Article 414-17, shall be given to the subscriber or the purchaser. The contents of the rules shall be stipulated by an AMF instruction.

The subscribers or purchasers shall give written acknowledgement, when making the subscription or purchase, that they have been warned that subscriptions and purchases of units in the fund, made directly or through an intermediary, are reserved for the eligible investors listed in D. 411-1, D. 411-2, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the Monetary and Financial Code and for the other investors referred to in point I.

IV. - The depository, or the person named in the fast-track venture capital fund rules, shall ensure compliance with the eligibility criteria for subscribers or purchasers and that the latter have received the information required under the provisions points II and III. They shall also ensure that the written acknowledgement referred to in the second paragraph of point III exists. In the event of non-compliance with these provisions, the depository or abovementioned person shall notify the AMF.

V. - This article shall apply to the conversion of a collective investment scheme that is not covered by this section into a fast-track venture capital fund.

#### **Article 414-28**

*(Deleted by the Order of 18 March 2008)*

**Article 414-29**

If a non-resident of France subscribes or purchases units in fast-track venture capital funds marketed in other countries, the investors for whom subscriptions and purchases of these collective investment schemes are reserved and the conditions under which they can waive their right to advice shall be governed by the law of the country in which the marketing takes place.

**Article 414-30**

The provisions of Articles 411-50, 411-53 through 411-55 and 414-13 shall apply.

**Article 414-31**

Fast-track venture capital funds shall produce documents in compliance with the provisions set out in an instruction and with a frequency of at least once a year to be established by the fast-track venture capital fund rules.

The documents shall be provided immediately to any subscriber or holder asking for them.

**Article 414-32**

The documents sent to the AMF under the provisions of Articles 414-15, 414-18, 414-20, 414-21, 414-22 and 414-25 shall be sent for reporting purposes only. Acceptance by the AMF shall not imply any judgment about their content or the transactions they report.

**Article 414-33**

*(Deleted by the Order of 18 March 2008)*

## **CHAPTER V - EMPLOYEE INVESTMENT FUNDS (FONDS COMMUNS DE PLACEMENT D'ENTREPRISE, FCPEs) AND SICAVs FOR EMPLOYEE SHAREHOLDERS**

### **Article 415-1**

The provisions applying to all collective investment schemes set out in Chapter 1 of this Title shall apply to employee investment funds (fonds communs de placement d'entreprise, FCPEs) governed by Articles L. 214-39 and L. 214-40 of the Monetary and Financial Code and Article L. 3332-16 of the Labour Code, and to SICAVs for employee shareholders governed by Article L. 214-40-1 of the Monetary and Financial Code, except for Articles 411-12 and 411-14, the first paragraph of Article 411-21 with regard to employee investment funds and paragraphs 2 to 4 of points I and II of Article 411-5 and paragraphs 2 to 4 of points I and II of Article 411-7.

These collective investment schemes shall also be subject to the following provisions.

### **Section 1 - Formation and authorization**

#### **Article 415-2**

I. - Authorization of a SICAV for employee shareholders or an employee investment fund shall be subject to prior filing of an application with the AMF that contains the elements stipulated in an AMF instruction.

Absent a response from the AMF for one month following acknowledgement of receipt of the application by the AMF, authorization is deemed granted.

If the AMF asks for additional information that requires the portfolio management company to submit a supplementary information sheet, the AMF shall serve written notice stipulating that the items requested must arrive within sixty days. If it fails to receive the elements within this period, the application for authorization shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the information requested. The acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than the one stipulated in the second paragraph.

II - The time period referred to in I shall be reduced to eight business days following acknowledgement of receipt of the application by the AMF if the collective investment scheme applying for authorization is comparable to a collective investment scheme already approved by the AMF. The AMF shall assess the comparability of the collective investment scheme applying for authorization ("comparable scheme") and the AMF-approved collective investment scheme ("reference scheme") in light of the following factors *inter alia* :

1° The reference scheme and the comparable scheme shall be managed by the same portfolio management company or the same delegated investment manager, or by portfolio management companies or delegated investment managers belonging to the same corporate group, and subject to the AMF's assessment of the information supplied by the portfolio management company of the comparable scheme in accordance with an AMF instruction ;

2° The reference scheme shall have been approved by the AMF and been set up during the 18 months prior to the AMF's receiving the authorization application from the comparable scheme. At the reasoned request of the portfolio management company of the comparable scheme, the AMF may accept that the reference scheme was authorized and set up more that 18 months before receiving the application from the comparable scheme ;

3° The reference scheme shall not have undergone any changes other than those listed in an AMF instruction. At the reasoned request of the portfolio management company of the comparable scheme, the AMF may allow a collective investment scheme that has undergone changes other than those referred to in the instruction to be a reference scheme ;

4° Subscribers to the comparable scheme shall meet the subscription and purchase rules of the reference scheme ;

5° The investment strategy, risk profile, operating rules and articles of the comparable scheme shall be similar to those of the reference scheme.

Where one of the items in the constitutive documents of the comparable scheme differs from that of the reference scheme, it shall be clearly identified in the comparable scheme's authorization application, in accordance with an AMF instruction.

The authorization application of the comparable scheme shall be filed electronically.

If the AMF asks for further information that requires a response by means of a supplementary information sheet, it shall serve written notice stipulating that the requested information must be supplied within sixty days. If the AMF does not receive these items within this period, the authorization application shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the information requested. The

acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than eight business days.

If either the comparable scheme or the reference scheme fails to meet the conditions set forth in this article, the AMF shall serve written notice stipulating that the additional information needed to constitute an authorization application in accordance with the arrangement described in I must reach it within sixty days. If the AMF does not receive all this additional information within this period, the authorization application shall be deemed rejected. The AMF shall issue a written acknowledgement of receipt when it has received all the additional information and shall examine the application for authorization of the comparable scheme in accordance with the procedure referred to in I. The acknowledgement of receipt shall stipulate a new authorization period, which cannot be longer than one month.

#### **Article 415-3**

The period for subscribing shares in a SICAV for employee shareholders or units in an employee investment fund must start within twelve months of the date on which the SICAV or the fund is authorised. Failing this, the authorization shall be deemed to be null and void, unless the AMF explicitly grants an exception.

Subscriptions and purchases of shares in a SICAV for employee shareholders or units in an employee investment fund shall be reserved for the employees of the group as defined in the second paragraph of Article L. 3344-1 of the Labour Code and, where appropriate, for the persons stipulated in the second paragraph of Article L. 3332-2 of the Labour Code and for employees taking part in a share buyback as defined in Article L. 3332-16 of the Labour Code.

The minimum capital or the minimum assets required to constitute a SICAV for employee shareholders may be contributed by other investors than the ones referred to in the preceding paragraph, provided that these investors undertake to request the redemption of their shares as soon as subscriptions are accepted from the abovementioned employees and, where appropriate, from the persons stipulated in the second paragraph of Article L. 3332-2 of the Labour Code.

## **Section 2 - Operating rules**

#### **Article 415-4**

An employee investment funds or a SICAV for employee shareholders may only merge with another employee investment fund or SICAV for employee shareholders.

#### **Article 415-5**

Any plans for mergers, demergers and takeovers involving one or more collective investment schemes for employees or one or more subfunds in a collective investment scheme shall be decided by the supervisory board of the employee investment fund, or the board of directors or the executive board of the SICAV for employee shareholders. The plans shall be subject to the prior authorization of the AMF. The merger or demerger must be completed within three months of being authorised. Failing this, the authorization shall be deemed to be null and void, unless the AMF explicitly grants an exception.

#### **Article 415-6**

If holders are not entitled to a whole number of units or shares as a result of the exchange parity, the units or shares in the collective investment scheme for employees shall be divided so that the fractional units or shares can be reinvested.

#### **Article 415-7**

The net asset value shall be made available to the supervisory board of the employee investment fund, or the board of directors or the executive board of the SICAV for employee shareholders on the first business day following its calculation.

#### **Article 415-8**

If the mechanism ensuring liquidity of securities that are not traded on a regulated market is provided by another entity than the ones referred to in the second to last paragraph of Article R. 214-52 of the Monetary and Financial Code, it may provided by a natural person or legal entity that is separate from the portfolio management company, from the SICAV for employee shareholders and from the corporation whose securities are held by the employee investment fund or the SICAV for employee shareholders, provided that this person or entity undertakes to redeem the number of securities necessary to provide liquidity that is at least equivalent to that of a collective investment scheme that holds at least one third of its assets in liquid securities. This undertaking must be counter-guaranteed in compliance with the following procedures, which may be combined :

1° A performance guarantee from a credit institution with its registered office in a country that belongs to the OECD, an insurance company or an investment company with its registered office in a Member State of the European Union or a State party to the EEA agreement and that is authorised to provide the service referred to in point 1 of Article L. 321-2 of the Monetary and Financial Code and which has capital, as defined in Directive 2000/12/EC of 20 March 2000, of EUR 3.8 million or more.

2° A line of credit granted by a credit institution with its registered office in a country that belongs to the OECD for the purpose of fulfilling the guarantee defined in this Article ;

3° A portfolio of liquid securities, as defined in Article 7 bis of Decree 89-623 of 6 September 1989, pledged to the portfolio management company of the employee investment fund or the SICAV for employee shareholders.

If the company is open-ended, the mechanism for guaranteeing the liquidity of the securities provided for in the last paragraph of Article 7 bis of Decree 89-623 of 6 September 1989 may be provided by the company under the forms defined in points 1°, 2° and 3°.

#### **Article 415-9**

The price at which the guarantor redeems units or shares shall be set by the employee investment fund rules or the articles of association of the SICAV for employee shareholders.

An AMF instruction shall stipulate the clauses that must be included in the liquidity guarantee contract.

#### **Article 415-10**

The supervisory boards of employee investment funds shall give an account of the tasks incumbent upon them under Articles L. 214-39 and L. 214-40 of the Monetary and Financial Code in their annual reports.

The boards of directors of SICAVs for employee shareholders shall give an account of the tasks incumbent upon them under Article L. 214-40-1 of the Monetary and Financial Code in their annual reports.

### **Section 3 - Public information**

#### **Article 415-11**

The fees paid by an employee investment fund or a SICAV for employee shareholders, as described in point 2° of Article 411-46, shall be supplemented, where appropriate, by a list of fees related to the operations of the employee investment fund or the SICAV for employee shareholders that are covered by the company.

#### **Article 415-12**

The full prospectuses of employee investment funds and SICAVs for employee shareholders shall consist of two documents : the information circular and the fund rules or articles of association. The content of these documents, and information about fees in particular, shall be stipulated by an AMF instruction.

#### **Article 415-13**

An AMF instruction shall stipulate which offering circulars the employee investment fund or SICAV for employee shareholders must make available to holders of units or shares relating to any collective investment scheme in which it has invested more than 50 per cent of its assets.

If such a collective investment scheme invests in units or shares of other collective investment schemes, the information circular shall stipulate, as appropriate, whether the employee investment fund or the SICAV for employee shareholders has invested more than 50 per cent of its assets in units or shares of a single collective investment scheme and shall give the names of such collective investment schemes.

#### **Article 415-14**

Employee investment funds and SICAVs for employee shareholders shall publish their net asset value at least once a month, with the exception of employee shareholding schemes governed by the fourth and fifth paragraphs of Article L. 3332-17 of the Labour Code, which publish their net asset value at least once a year, bearing in mind that it may not be calculated more than once a quarter, and FCPEs governed by Article L. 3332-16 of the Labour Code, which publish their net asset value at least once a year.

**CHAPTER VI - FUTURES FUNDS (FONDS COMMUNS D'INTERVENTION SUR LES MARCHÉS À TERME)****Article 416-1**

The provisions applying to all collective investment schemes referred to in Chapter 1 of this Title shall apply to futures funds (fonds communs d'intervention sur les marchés à terme, FCIMTs) governed by Article L. 214-42 of the Monetary and Financial Code, except for point I of Article 411-7, Articles 411-44-1 through 411-44-5, point 1° of Article 411-45 and Article 411-56.

Futures funds shall also be subject to the following provisions.

**Article 416-2**

Subscriptions and purchases of futures fund units shall be reserved for :

- 1° Investors referred to in the first paragraph of Article L. 214-35-1 of the Monetary and Financial Code ;
- 2° The central government, or in the case of a federal system, one of the members making up the federation ;
- 3° The European Central Bank, central banks, the World Bank, the International Monetary Fund, the European Investment Bank ;
- 4° Companies that met two of the following three criteria at the end of the previous financial year :
  - a) Total balance-sheet assets of more than EUR 20,000,000 ;
  - b) Turnover of more than EUR 40,000,00 ;
  - c) Shareholders' equity of more than EUR 2,000,000 ;
- 5° Investors whose initial subscription is EUR 10,000 or more.

**Article 416-3**

If a non-resident of France subscribes or purchases futures fund units marketed in other countries, the investors for whom subscriptions and purchases of this futures fund are reserved and the conditions under which they can waive their right to advice shall be governed by the law of the country in which the marketing takes place.

**Article 416-4**

*(Deleted by the Order of 18 March 2008)*

**Article 416-5**

Investors shall give written acknowledgement, when making the first subscription or purchase, that they have been warned that subscriptions and purchases of futures fund units, made directly or through an intermediary, are reserved for the investors referred to in Article 416-2.

**Article 416-6**

The depository, or the person named in the full prospectus of the futures fund, shall ensure that subscribers or purchasers meet the eligibility criteria and that they have received the information required under the provisions of Articles 413-5 and 411-51. They shall also ensure that the written acknowledgement referred to in Article 413-6 exists.

**Article 416-7**

If the variable management fee is based solely on the positive results of the futures fund's transactions and positions on futures markets, the full collective investment scheme prospectus may provide for the fee to be calculated as soon as the first euro of positive performance is posted under the conditions stipulated in Article 322-41. Failing that, the variable component of the management fee shall be based on the excess return of the futures fund compared to the management objective set out in the prospectus.

**Article 416-8**

If a futures fund is marketed exclusively outside of France, the full prospectus may be written in a language other than French that is customary in the sphere of finance.

**Article 416-9**

Futures funds shall compile and publish their net asset value each trading day, excluding holidays, if the fund rules provide for it.

**Article 416-10**

Futures funds (FCIMTs) shall draw up an information document, the content of which is specified in an AMF instruction, at the end of each quarter.

Where the fund includes subfunds, periodic information documents shall also be drawn up for each subfund.

Futures funds shall have the composition of their assets certified by their statutory auditor.

**CHAPTER VII - TRANSITIONAL PROVISIONS****Article 417-1**

I. - Portfolio management companies in existence on the publication date of these General Regulations [24 november 2004] shall file a statement with the AMF by 29 January 2005 in accordance with the procedures set by the AMF. This statement shall explain whether the company intends to achieve compliance with the provisions of the second paragraph of Article 322-1.

1° If portfolio management companies declare their intention to achieve compliance with the provisions of the second paragraph of Article 322-1 :

- a) They shall immediately comply with the capital requirement set out in the second paragraph of Article 322-8 ;
- b) They shall achieve compliance with the provisions of the second paragraph of Article 322-1 and the provisions of the first paragraph of Article 322-8 on shareholders' equity on or before 30 June 2005 ;
- c) They shall manage at least one UCITS that is compatible with directive 85/611/EEC of 20 December 1985 by 30 of September 2005.

2° Other portfolio management companies in existence on the publication date of these General Regulations shall comply with the provisions of Article 322-8 on or before 30 June 2005. Portfolio management companies shall remain subject to Article 6 of Commission des Opérations de Bourse Regulation 96-02 on investment service providers engaging in portfolio management for third parties until they achieve the abovementioned compliance.

II. - Portfolio management companies in existence on the publication date of these General Regulations [24 november 2004] shall comply with the provisions of Article 322-10 on or before 30 June 2005.

III. - The following shall bring their prospectuses into compliance with the contents of the full prospectus stipulated by the instruction referred to in Article 411-45 before 30 September 2005 :

1° UCITS that comply with Directive 85/611/EC of 20 December 1985 that have or have not received marketing authorization in another State party to the EEA agreement and that are in existence on the publication date of these General Regulations [24 november 2004] ;

*(2° deleted by the Order of 10 May 2006)*

3° Collective investment schemes in existence on 22 November 2003 that are covered by the former wording of Chapter VIII of Decree 89-623 of 6 September 1989, before the publication of Decree 2003-1103 of 21 November 2003, as well as collective investment schemes in existence on the publication date of these General Regulations [24 november 2004] that are covered by Chapter VIII of Decree 89-623 of 6 September 1989.

IV. - The following shall bring their prospectuses into compliance with the contents of the full prospectus stipulated by the instruction referred to in Article 411-45 before 30 April 2006 :

1° Collective investment schemes that invest more than 10 per cent of their assets in units or shares of the collective investment schemes referred to in point c of Article 1 of Decree 89-623 of 6 September 1989 or in the investment fund units referred to in point 5° of Article 3 of said Decree that, as of 30 September 2005, have not filed applications with the AMF for authorization to transform themselves into collective investment schemes with streamlined investment rules or into contractual collective investment schemes or a declaration of conversion to collective investment schemes governed by Article 13-1 of Decree 89-623 of 6 September 1989 ;

2° Collective investment schemes other than the venture capital funds referred to in Article 414-1, the employee investment funds and SICAVs for employee shareholders referred to in 415-1 and the collective investment schemes referred to in point 1° and in point III.



V. - Notwithstanding the provisions of points III and IV, collective investment schemes governed by Chapter VII bis of Decree 89-623 of 6 September 1989 that are in existence on the publication date of these General Regulations [24 november 2004] and are no longer being marketed on that date shall not be required to bring the content of their prospectuses into compliance with the contents of the full prospectus defined by the instruction referred to in Article 411-45 until the end of the term of the formula, unless it is changed.

VI. - If a portfolio management company delegates the financial management of a collective investment scheme, it must make sure that, by the time the prospectus of the collective investment scheme is brought into compliance with the contents of the full prospectus stipulated by the instruction referred to in Article 411-45 :

1° The delegation agreement in force on the publication date of these General Regulations [24 november 2004] mentions the elements required for compliance with point 5° in Article 322-16 ;

2° The delegation of management complies with point 8° of Article 322-16.

VII. - Notwithstanding the first paragraph of Article 411-10, collective investment schemes in existence on the publication date of these General Regulations [24 november 2004] that do not have marketing authorization in another State party to the EEA agreement may request to be converted to a collective investment scheme that does not comply with Directive 85/611/EC of 20 December 1985, when they bring their prospectuses into compliance with the contents of the full prospectus defined by the instruction referred to in Article 411-45.

VIII. - SICAVs that claim to comply with Directive 85/611/EEC of 20 December 1985 shall delegate the overall management of their portfolios as referred to in Article L. 214-15 of the Monetary and Financial Code to delegated management companies that comply with the provisions of the second paragraph of Article 322-1, or that have declared their intention to do so under the provisions of point 1° in I.

IX. - Collective investment schemes in existence on the publication date of these General Regulations [24 november 2004] that invest more than 10 per cent of their assets in units or shares of the collective investment schemes referred to in point c of Article 1 of Decree 89-623 of 6 September 1989 or in the investment fund units referred to in point 5° of Article 3 of said Decree shall file the following with the AMF :

1° An application for authorization to transform themselves into collective investment schemes with streamlined investment rules or into contractual collective investment schemes on or before 30 September 2005 ;

2° Or an application for authorization to transform themselves into collective investment schemes governed by Article 13-1 of the abovementioned Decree of 6 September 1989 on or before 30 September 2005 ;

3° Or a declaration of their conversion to collective investment schemes governed by Article 13-2 of the Decree of 6 September 1989 on or before 30 April 2006.

X. - The changes made under the provisions of point IX shall simultaneously require the collective investment schemes concerned to bring their prospectuses into compliance with the contents of the full prospectus stipulated by the instruction referred to in Article 411-45.

Bringing the prospectuses of the collective investment schemes referred to in point IX into compliance with the contents of the full prospectus stipulated by the instruction referred to in Article 411-45 shall simultaneously require one of the changes provided for in point IX.

XI. - Collective investment schemes in existence on 22 November 2003 that are covered by the former wording of Chapter VIII of Decree 89-623 of 6 September 1989, before the publication of Decree 2003-1103 of 21 November 2003, as well as collective investment schemes in existence on the publication date of these General Regulations [24 november 2004] that are covered by Chapter VIII of Decree 89-623 of 6 September 1989 shall file an application with the AMF on or before 30 September 2005 for authorization for conversion to :

1° A collective investment scheme described as an "enhanced index fund" ;

2° Or an index fund governed by the other provisions of Article 411-35.

XII. - The changes made under the provisions of point XI shall simultaneously require the collective investment schemes concerned to bring their prospectuses into compliance with the contents of the full prospectus stipulated by the instruction referred to in Article 411-45.

Bringing the prospectuses of the collective investment schemes referred to in point XI into compliance with the content of the full prospectus stipulated by the instruction referred to in Article 411-45 shall simultaneously require one of the changes provided for in point XI.

XIII. - Collective investment schemes in existence on 22 November 2003 that are covered by the former wording of Chapter VIII of Decree 89-623 of 6 September 1989, before the publication of Decree 2003-1103 of 21 November 2003, as well as collective investment schemes in existence on the publication date of these General Regulations [24 november 2004] that are covered by Chapter VIII of Decree 89-623 of 6 September 1989 shall comply with the provisions of Article 411-35 at the later of the two following dates :

1° 1 July 2005 ;

2° The date on which the collective investment scheme prospectus is brought into compliance.

Notwithstanding the last paragraph of Article 411-35, up until 31 December 2005, the reference period used for calculating the tracking error defined in the abovementioned Article shall start on 1 January 2005.

XIV. - The provisions of the sixth paragraph of Article 411-54 shall not apply :

1° To collective investment schemes governed by Chapter VII bis of Decree 89-623 of 6 September 1989 that are in existence on 22 November 2003 ;

2° To reserved collective investment schemes that comply with the third paragraph of Article 411-12 and are in existence on 22 November 2003 ;

3° To collective investment schemes in existence on the publication date of these General Regulations when they are transformed into collective investment schemes with streamlined investment rules, if the conversion application is filed with the AMF before 30 October 2006.

XV. - Portfolio management companies shall file declarations with the AMF on or before 29 January 2005, using the form established by the AMF and containing the following elements :

1° A description of the procedure that the management companies undertake to implement to bring the prospectuses of the collective investment schemes that they manage into compliance with the contents of the full prospectus stipulated by the instruction referred to in Article 411-45 ;

2° The timetables that the management companies undertake to respect for staggered delivery to the AMF of the full prospectuses after they are brought into compliance with the contents of the full prospectus stipulated by the abovementioned instruction.

3° Lists of the various groups of collective investment schemes that meet common objective criteria.

The AMF shall draw up the list of the conversions subject to its authorization when they are simultaneous with bringing the collective investment scheme prospectuses into compliance and define the conditions under which it will grant this authorization.

XVI. - The conditions for subscribing or purchasing units or shares in collective investment schemes referred to in Article 413-13 shall not apply to holders of units or shares in collective investment schemes that meet the following three conditions :

1° These collective investment schemes are in existence on the publication date of these General Regulations [24 November 2004] ;

2° These collective investment schemes invest more than 10 per cent of their assets in units or shares of collective investment schemes referred to in point c of Article 1 of Decree 89-623 of 6 September 1989 or in units of investment funds referred to in point 5° of Article 3 of the abovementioned Decree ;

3° These collective investment schemes are transformed into collective investment schemes with streamlined investment rules for alternative funds of funds under the conditions provided for in point IX.

XVII. - Persons holding units in a futures fund before the publication date of these General Regulations [24 November 2004] shall not be subject to the subscription and purchase conditions for units in this futures fund.

XVIII. - Collective investment schemes in existence at 24 November 2004 and investing more than 10% of their assets in the units or shares of collective investment schemes or in the units or shares of the foreign investment funds referred to in Article R. 214-36, I, 1° to 5° of the Monetary and Financial Code must bring their prospectuses into conformity with the contents of the full prospectus, as specified in the instruction referred to in Article 411-45, before 30 October 2006.

The changes made under the provisions of first paragraph shall simultaneously require the collective investment schemes concerned to bring their prospectuses into compliance with the contents of the full prospectus stipulated by the instruction referred to in Article 411-45.

## TITLE II - OTHER COLLECTIVE INVESTMENT ENTITIES

### CHAPTER I - DEBT SECURITISATION FUNDS (FONDS COMMUNS DE CREANCES)

#### Article 421-1

The provisions of this Chapter shall apply to debt securitisation funds (fonds communs de créances, FCCs) governed by Articles L. 214-43 to L. 214-49, R.214-92 to R. 214-115, R. 732-6, R. 742-6, R. 752-6 and R. 762-6 of the Monetary and Financial Code.

#### Section 1 - Placing of debt securitisation fund units

#### Article 421-2

Securitisation fund transactions involving public offerings shall be covered by the provisions of Title I of Book II, subject to the following provisions.

#### Article 421-3

Securitisation fund units come under the provisions of I of Article L. 621-8 of the Monetary and Financial Code.

#### Article 421-4

The draft prospectus mentioned in Article 212-1 shall be drawn up jointly by the management company and the custodian.

Where the securitisation fund includes subfunds, a prospectus shall be prepared for each issuer's subfund.

#### Article 421-5

For the purposes of Article 212-14, the management company and the custodian shall assume responsibility for the prospectus.

#### Article 421-6

The completion letter drawn up by the statutory auditors pursuant to Article 212-15 shall be remitted to the management company and the custodian.

#### Article 421-7

The criteria and conditions mentioned in point 1° of Article 212-17 may also be presented in the prospectus in the following form :

1° a range for the nominal rate and the subscription price ;

2° a yield spread or a range of yield spreads against a specified market benchmark, for the yield to maturity. Barring special circumstances in the market, yield to maturity spreads shall not exceed 0.10 %.

#### Article 421-8

The rating document mentioned in Article L. 214-44 of the Monetary and Financial Code shall be sent to the AMF at least two trading days before the desired date of issue of the *visa*.

#### Article 421-9

The time period mentioned in Article 212-21 shall be reduced to five trading days.

#### Article 421-10

The time period mentioned in Article 212-22 may be reduced to five trading days when the management company and the custodian declare that the draft prospectus of a subfund contains operating rules that are identical to those in a draft prospectus previously approved by the AMF for another subfund of the same fund.

**Article 421-11**

Pursuant to the provisions of point 2° of I of Article 212-27, investors may obtain a copy of the prospectus free of charge from the management company and from the service providers responsible for taking subscription orders. Investors may also obtain, free of charge, the rules of the fund and any subfund thereof.

**Section 2 - Regular and periodic information****SUB-SECTION 1 - REGULAR INFORMATION****Article 421-12**

Securitisation funds shall be subject to the provisions of Articles 223-1 to 223-10-1.

**SUB-SECTION 2 - PERIODIC INFORMATION****Article 421-13**

At the end of each financial year, the management company shall compile the fund's financial statements under the supervision of the depository. The list of these statements shall be defined by an AMF instruction.

**Article 421-14**

Within four months of the end of the financial year, the management company shall compile and publish an annual activity report under the supervision of the depository and after an audit by the statutory auditor. The contents of this report shall be defined by an AMF instruction.

Within three months of the end of the first six months of the financial year, the management company shall compile and publish a half-yearly activity report under the supervision of the depository and after an audit by the statutory auditor. The contents of the report shall be defined by an AMF instruction.

If the debt securitisation fund has subfunds, the reports shall be produced for each subfund. The fund shall also produce annual financial statements and the notes thereto for the fund and, where appropriate, for the subfund.

**Article 421-15**

The activity reports provided for in Article 421-14 shall be sent to unit holders free of charge at their request.

Any investor may obtain these activity reports, free of charge once they are published, from the management company and the custodian.

These documents shall be distributed by mail or by any other means provided for in the fund's prospectus. The investor may choose his preferred means of delivery of these documents from among the options offered.

A copy of these documents shall be sent to the AMF.

**Article 421-16**

The management company shall make periodic disclosures about the fund's assets and liabilities under conditions to be defined by an AMF instruction.

**Article 421-17**

After it has published its activity report for the year, the management company shall file the document mentioned in Article 222-7.

**CHAPTER II - REAL ESTATE INVESTMENT COMPANIES (SOCIÉTÉS CIVILES DE PLACEMENT IMMOBILIER)****Section 1 - Formation****Article 422-1**

The initial capital of a real estate investment company (sociétés civiles de placement immobilier, SCPI) shall be fully subscribed and paid up by the founding members without any public offering ; the shares in the company shall be non-transferrable for three years after the date on which the AMF issues its visa.

**Article 422-2**

The guarantee provided for in Article L. 214-51 of the Monetary and Financial Code shall be provided by a banking institution. The guarantee may take the form of a personal guarantee of joint and several liability for the real estate investment company with a waiver of any claim to the proceeds from the sale or division of assets.

The wording of the bank guarantee granted shall be submitted for the AMF's approval with the visa application. The prospectus shall mention this guarantee.

**Article 422-3**

If at the end of a statutory one-year period, the conditions set out in the first paragraph of Article L. 214-54 of the Monetary and Financial Code have not been met, the management company must so notify the AMF within fifteen days, along with the bank, which shall be given the list of subscribers and the amounts to be reimbursed.

This notice shall be sent by registered letter with acknowledgement of receipt that shall specify the date on which an extraordinary general meeting has been called to vote on winding up the company.

The general meeting must be held within two months of the end of the statutory one-year period.

The partners must be reimbursed within six months of the date of the abovementioned extraordinary general meeting.

The bank guarantee must not stipulate an expiry date that falls before the end of this six-month period.

**Section 2 - Public offerings****Article 422-4**

I. - The real estate investment company may not make a public offering unless it has :

- 1° Produced a prospectus that has received an AMF visa ;
- 2° Published a notice in the official gazette (BALO) ;
- 3° Produced a subscription application.

II. - The initial public offering shall also be subject to :

- 1° Subscription of the initial capital by the founding partners ;
- 2° Authorization of the management company ;
- 3° Acceptance of the property appraiser presented ;
- 4° Approval of the bank guarantee referred to in Article 422-2.

**Article 422-5**

A prospectus shall be produced :

- 1° Before the initial public offering ;
- 2° If the difference between the subscription price of a share in a real estate investment company and the replacement value per share declared to the AMF is greater than 10 per cent ;
- 3° If material changes within the real estate investment company or the management company require amendments to the prospectus.

**Article 422-6**

The extraordinary general meeting must authorise any visa application on the basis of a report produced by the management company in the event of :

- 1° Issuance of new shares after a period of more than three years in which no increase in capital has occurred. In this event, the statutory auditor must review the management company's report ;
- 2° Changes to the initial investment policy.

**Article 422-7**

If the AMF deems that the prospectus no longer corresponds to the real estate investment company's true circumstances, and after a formal demand to remedy the situation fails to produce results, the visa given to the prospectus shall be withdrawn.

The management company of the real estate investment company shall be notified of the reasoned decision to withdraw the visa and shall inform the supervisory board of the withdrawal.

This measure shall result in a ban on public offerings of shares in the real estate investment company.

**Article 422-8**

In the event of a capital increase, the issuance of new shares shall be announced in a notice produced in the form defined in an AMF instruction, before any advertising is made for subscriptions for new shares and before any subscriptions are accepted for the shares. This notice shall be published in the official gazette (BALO) six or more days before the subscription period starts.

The prospectus, circulars, posters and newspaper advertisements informing the public about the offering of shares or the issuance of new shares shall include prominent reference to :

1° The publication in the official gazette (BALO) of the notice referred to in the first paragraph, along with the references of the edition in which it was published ;

2° The existence of the offering circular provided for by Article L. 412-1 of the Monetary and Financial Code.

Companies that have opted to be open-ended under the provisions of Article L. 231-1 of the Commercial Code shall publish a notice about the terms for subscriptions and redemptions each time these terms change (price, maturity, etc.), according to the same procedures and within the same time limits stipulated in the first paragraph.

The information contained in the notice shall also be sent to shareholders by ordinary mail six or more days before the first day of the subscription period.

**Article 422-9**

In the event that new shares are issued, before subscribing each subscriber shall receive a comprehensive dossier containing :

1° The articles of association of the company ;

2° The current prospectus reviewed by the AMF, updated as appropriate and printed in easily legible type ;

3° The subscription application containing the information stipulated by an instruction issued for the purposes of this Chapter ;

4° The most recent annual report ;

5° The most recent quarterly statement.

Any subscription for shares shall be made using a subscription application dated and signed by the subscriber or the subscriber's agent, who shall write out in words the number of shares subscribed. The subscriber shall receive a copy of the application.

**Section 3 - Operation****SUB-SECTION 1 - MANAGEMENT AGREEMENTS****Article 422-10**

The agreements concluded between the real estate investment company and its management company or any partner of the management company shall be approved by the ordinary general meeting of the partners.

The rate, calculation base and other components of the management company's compensation may be stipulated in the real estate investment company's articles of association. Failing this, the exact terms of this compensation shall be set out in a special agreement between the management company and the real estate investment company, which shall be approved by the latter's ordinary general meeting.

The terms of the management company's compensation shall be disclosed to subscribers in the prospectus reviewed by the AMF.

All the fees or compensation paid to the management company must be defined in the prospectus.

**Article 422-11**

The management company's compensation shall consist of three types of fees :

- 1° A subscription fee, calculated on the basis of the sums received from capital increases ;
- 2° A redemption fee, calculated on the basis of the transaction amounts when redemptions are made from the register provided for in Article 422-22, or on a flat fee basis ;
- 3° A management fee based on the rental income received, net of tax. The calculation base for this fee may be extended to include net financial income, provided this extension is disclosed to the public.

The articles of association of the real estate investment company or, failing that, the prospectus shall give a precise description of the calculation base and rates used for the fees paid to the management company.

**SUB-SECTION 2 - SUPERVISORY BOARD****Article 422-12**

The supervisory board shall give an opinion about the draft resolutions that the management company submits to the partners.

It shall refrain from taking any management action. In the event of default by the management company, the board shall immediately call a general meeting to choose a replacement.

**Article 422-13**

At the general meeting voting on the financial statements for the third full financial year, all members of the supervisory board shall be renewed in order to ensure the greatest possible representation of partners who are not linked to the founding partners.

**Article 422-14**

The management company shall maintain strict neutrality in the conduct of operations involved in the appointment of members of the supervisory board.

Prior to calling the general meeting to elect the new members of the supervisory board, the management company shall make a call for candidates so that non-founding partners obtain the greatest possible representation.

During the election of members of the supervisory board, only the votes of partners present at the meeting and postal ballots shall be counted.

**SUB-SECTION 3 - GENERAL MEETINGS****Article 422-15**

The ordinary general meeting to discuss the annual financial statements shall take place at least once a year in the six months following the end of the financial year, unless this period is extended by a court order.

**Article 422-16**

The management company, acting in the name of the real estate investment company, may contract loans, take on debts or make acquisitions against future payment, albeit subject to a maximum limit on the amounts.

The general meeting of the partners shall set this limit so that it is consistent with the real estate investment company's ability to pay on the basis of its ordinary revenues for loans and debts, and with its ability to borrow for acquisitions against future payment.

In the event of the sale of one or more of the company's rental properties without reinvestment of the proceeds, the general meeting shall have the sole authority to decide on the use of the proceeds of the sale for :

- 1° Full or partial distribution with, as appropriate, redemption of the par value of the shares ;
- 2° An appropriation to the redemption fund provided for in Sub-section 3 of Section 5.

**Section 4 - Disclosures by the real estate investment company****Article 422-17**

I. - An AMF instruction shall stipulate the conditions for making disclosures to partners using printed matter ;

1° Prior to collating subscriptions : the prospectus reviewed by the AMF, the subscription application, the articles of association, the most recent annual report and the most recent quarterly statement shall be given to future partners ;

2° The annual report, quarterly statements and circulars.

II. - The management company shall send all the documents intended for the partners to the AMF immediately.

The management company shall send the AMF, according to the conditions set out by the latter :

1° Quarterly statistics in the month following the end of the quarter ;

2° Before 15 March of each year, the market value and replacement value of the real estate investment company, which must be submitted for the partners' approval ;

3° Any changes in these values over the year after their approval by the supervisory board, along with proof of the change in value.

#### **Article 422-18**

Each year, an annual report for the real estate investment company shall be compiled, including a management report, the financial statements and notes for the year, the supervisory board's report and the statutory auditors' reports.

The annual report shall review the key characteristics of the management company and the membership of the supervisory board.

#### **Article 422-19**

The management report submitted to the general meeting shall give an account of :

1° Management policy, specific problems encountered and the outlook for the company ;

2° Changes in capital and share prices ;

3° Changes and valuation of real estate assets :

a) Acquisitions (realised, planned), sales, where appropriate, maintenance and renovation work between tenants ;

b) The valuation work carried out by the property appraiser ;

c) Information about property appraisals conducted prior to acquisitions of buildings during the year where the sellers have direct or indirect interests in common with the management company or the partners in the real estate investment company ;

4° Developments on the market for shares over the year ;

5° Changes in rental revenue, the proportion of rental revenue in total revenue, expenses ;

6° The situation of rental properties at the end of the year, building by building : exact location of the buildings, types of buildings, floor area, acquisition dates and completion dates, as appropriate, purchase prices net of taxes and duties, amounts of taxes and duties ;

7° Occupancy of the buildings, with information about the occupancy rate expressed as an annual average of the ratio of rents billed to billable rents, significant vacancies reported during the financial year and the resulting revenue shortfall for the real estate investment company.

#### **Article 422-20**

Within forty-five days of the end of each quarter a newsletter shall be disseminated giving an account of the main developments in the company over the quarter in question.

## **Section 5 - Shares and redemption fund**

### **SUB-SECTION 1 - TRANSFERS**

#### **Article 422-21**

For the purposes of this section :

1° The term "order" referred to in Article L. 214-59 of the Monetary and Financial Code shall designate any buy or sell order relating to real estate investment company shares sent to the management company or an intermediary ;



2° The term "intermediary" shall designate any person other than the management company that is professionally qualified to receive a buy or sell order relating to real estate investment company shares ;

3° The term "person" shall designate a natural or legal person.

#### **Article 422-22**

To be valid, orders shall be recorded in a register kept at the registered office of the company in accordance with the conditions set out in an AMF instruction.

No time limits shall apply to sell orders.

The recording of orders in the register referred to in the first paragraph of an open-ended real estate investment company shall constitute an adequate measure for the purpose of point II of Article L. 214-59 of the Monetary and Financial Code. Where this measure is applied, redemption requests shall be suspended.

#### **Article 422-23**

The management company or the intermediary shall be required to provide any person who requests them with the five highest buy prices and the five lowest sell prices listed in the register, along with the quantities bid and offered at these prices.

As soon as orders are received by the management company or the intermediary, they shall be recorded so that it is possible to reconstitute the steps in the processing of each order and the various transactions executed.

#### **Article 422-24**

The intermediary shall ensure that orders comply with the specifications given in an AMF instruction before sending them to the management company.

The intermediary shall send the orders to the management company with no prior summing or netting of buy and sell orders.

#### **Article 422-25**

The management company may hedge its exposure by :

1° Making the recording of buy orders subject to a cash payment under conditions set out in an AMF instruction ; or

2° Setting a deadline for receiving cash payments, after which orders recorded in the register are cancelled if the funds are not paid. In this case, the funds must be received on or before the day before the execution price is established.

#### **Article 422-26**

The management company shall time-stamp the orders sent to it, after ensuring that they meet the requirements for recording in the register.

It shall record them in the register referred to in Article 422-22 in chronological order.

#### **Article 422-27**

Before setting the execution price, the management company shall ensure that there are no obstacles to the execution of sell orders.

In particular, it shall ensure that the seller is duly empowered to sell the shares and has enough shares to honour the sell order if it is executed.

#### **Article 422-28**

The management company may make a reasoned decision under its own responsibility to suspend the recording of orders in the register after so notifying the AMF.

If the suspension results from the occurrence of a major event that, if it became public knowledge, would have a significant impact on the execution price of shares or the partners' situation and rights, the management company shall cancel the orders recorded in the register and inform each of the persons giving the orders or the intermediaries individually.

The management company shall ensure full and effective public disclosure of the reasoned decision by all appropriate means.

**Article 422-29**

The management company shall fix the execution price periodically by matching the orders recorded in the register at regular intervals and at a set time.

It shall set the frequency with which execution prices are established, which must be at least once every three months and no more than once every business day. The prospectus shall mention the frequency.

**Article 422-30**

Changes in the frequency of price-setting must be warranted by market constraints.

The management company shall notify buyers, sellers, intermediaries and the public of such a change six or more days before it takes effect.

The procedures for public dissemination of such information shall be explained in the prospectus.

**Article 422-31**

The execution price shall be the price at which the greatest number of shares can be traded.

If several prices can be set on the basis of the first criterion at the same time, the execution price shall be the one that leaves the smallest number of shares untraded.

In the event that these two criteria fail to establish a single price, the execution price shall be the one closest to the last execution price.

The execution price and number of shares traded shall be made public by all appropriate means on the day the price is established.

If it is impossible to establish an execution price, the management company shall publish, under the conditions set out in the previous paragraph, the highest buy price and the lowest sell price, along with the number of shares offered at each of these prices.

**Article 422-32**

The orders shall be executed as soon as the execution price is established and solely at that price.

Buy orders recorded with higher prices and sell orders recorded with lower prices shall be executed first. Orders with identical price limits shall be executed in the order in which they were recorded in the register.

The management company shall immediately record the transactions executed in this way in the register of partners.

**Article 422-33**

The management company shall make the information about prices and numbers of shares contained in the order register available to the public. It shall take the necessary steps to reduce the time lag :

1° Between receiving orders and recording them in the register ;

2° In informing the persons giving the orders or the intermediaries.

It shall provide proof of the execution of orders and their transmission for the persons giving the orders or the intermediaries.

**Article 422-34**

Intermediaries shall take the necessary steps to reduce the time lag :

1° Between receiving orders and sending them ;

2° In informing the persons giving the orders.

They shall provide proof of the reception of orders and their transmission for the persons giving the orders and the management company.

**Article 422-35**

The documentary proof of the different steps referred to in Articles 422-32 and 422-40 must be retained for five years.

**SUB-SECTION 2 - REDEMPTIONS****Article 422-36**

In open-ended real estate investment companies, requests for redemptions shall be notified to the management company by registered letter with acknowledgement of receipt.

As soon as they are received, such requests shall be recorded in the redemption request register and satisfied in chronological order.

**Article 422-37**

The management company of a company referred to in Article 422-36 shall determine the redemption price.

If the redemption is matched with a subscription, the redemption price cannot be higher than the subscription price less the subscription fee.

If the redemption is not matched, the redemption price cannot be higher than the market value or lower than the market value minus 10 per cent, unless authorised by the AMF.

**Article 422-38**

In the event that the redemption price falls, the management company shall notify the partners that have requested redemption of their shares no later than the day before the date on which the change takes effect by registered letter with acknowledgement of receipt.

If there is no response from the partners in the fifteen days following receipt of the registered letter with acknowledgement of receipt the redemption request shall be deemed to be valid at the new price. This information shall be included in the notice given in the letter.

**Article 422-39**

No new shares can be issued to increase the capital as long as the register referred to in Article 422-36 contains unfilled redemption requests at a price lower than or equal to the subscription price.

**SUB-SECTION 3 - REDEMPTION FUND****Article 422-40**

The creation and provisioning of a fund for redeeming shares in order to contribute to the liquidity of the market in the shares shall be decided by the general meeting of the partners in the real estate investment company.

The sums allocated to the fund shall come from the proceeds of sales of rental properties or allocations of profits made when the annual financial statements are approved.

The cash allocated to the redemption fund shall be used exclusively for reimbursing partners.

**Article 422-41**

This redemption fund is a specific account for an exclusive purpose and distinguished as a separate item in the accounts.

**Article 422-42**

Write-backs of available sums in the redemption fund shall require authorization by a vote of the general meeting of partners, following a reasoned report from the managed company.

The AMF shall receive prior notice of such write-backs.

**SUB-SECTION 4 - ADVERTISING AND PROMOTION****Article 422-43**

For the purpose of placing shares with the public, real estate investment companies shall be entitled to use any type of advertising, provided it indicates :

- 1° The number of the edition of the official gazette (BALO) that contains the notice ;
- 2° The name of the real estate investment company ;

3° The existence of the currently valid prospectus reviewed by the AMF, the visa date and number, and the locations where it can be obtained free of charge.

## **Section 6 - Property appraisals**

### **Article 422-44**

The market value and the replacement value of the real estate investment company shall be established by the management company at the end of each financial year on the basis of property appraisals carried out by an independent appraiser or several independent appraisers jointly. Each property shall be appraised at least once every five years.

The appraiser shall update the appraisal each year.

The task of the appraiser shall cover all the rental properties of the real estate investment company.

A newly appointed appraiser shall have the right to update appraisals conducted in the last five years.

The property appraisals must be carried out in accordance with methods that are appropriate for real estate investment companies.

### **Article 422-45**

The appraiser shall be appointed by the general meeting for a four-year term following the AMF's acceptance of the candidate put forward by the management company.

The AMF shall be entitled to require further information.

Unless the AMF asks for further information, the candidate shall be deemed to be accepted by the AMF two months after the filing of a full application.

Candidates for renewal of appraisers must be presented to the AMF at least three months before the end of the financial year.

If the AMF deems that, during the appraiser's term, the eligibility requirements are no longer being met, it shall so notify the management company, which shall then put forward a new candidate and propose the appointment of the candidate to the general meeting.

### **Article 422-46**

An agreement must be concluded between the appraiser and the real estate investment company. The agreement shall define the appraiser's tasks and set the terms for the appraiser's compensation.

The appraiser shall make an undertaking to the AMF about the conditions for performing the appraiser's tasks and the nature of the services provided in a form letter set out in an AMF instruction.

## **Section 7 - Conversion of real-estate investment companies into real-estate collective investment schemes**

### **Article 422-46-1**

Under the terms of Article L. 214-84-3 of the Monetary and Financial Code, the management company of the real estate investment company (SCPI) must send its subscribers and partners the following :

1° A table comparing the legal and tax rules for OPCIs and SCPIs ;

2° A memorandum explaining the differences between OPCIs and SCPIs, and the requirement that an SCPI must call a general meeting to submit the plans for conversion into an OPCI to the partners.

### **Article 422-46-2**

The terms for subscribing or buying the OPCI units or shares referred to in Article 413-5 shall not apply to partners in SCPIs that are in existence on the date on which this Section comes into force and are undergoing a conversion, merger with or absorption by an unleveraged OPCI with simplified operating rules.

## CHAPTER III - FORESTRY INVESTMENT COMPANIES (SOCIÉTÉS D'ÉPARGNE FORESTIÈRE)

### Section 1 - Formation

#### Article 423-1

The initial capital of a forestry investment company (société d'épargne forestière) shall be fully subscribed and paid up by the founding members without any public offering. The shares in the company shall be non-transferrable for three years after the date on which the AMF issues its visa.

#### Article 423-2

The guarantee provided for in Article L. 214-51 of the Monetary and Financial Code shall be provided by a banking institution. The guarantee may take the form of a personal guarantee of joint and several liability for the forestry investment company with a waiver of any claim to the proceeds from the sale or division of assets.

The wording of the bank guarantee granted shall be submitted for the AMF's approval with the visa application. The prospectus shall mention the guarantee.

#### Article 423-3

If at the end of a statutory two-year period, the conditions set out in Article L. 214-87 of the Monetary and Financial Code have not been met, the management company must so notify the AMF within fifteen days, along with the bank, which shall be given the list of subscribers and the amounts to be reimbursed.

This notice shall be sent by registered letter with acknowledgement of receipt that shall specify the date on which an extraordinary general meeting has been called to vote on winding up the company.

The meeting must be held within two months of the end of the statutory two-year period.

The partners must be reimbursed within six months of the date of the abovementioned extraordinary general meeting.

The bank guarantee must not stipulate an expiry date that falls before the end of the six-month period.

### Section 2 - Public offerings

#### Article 423-4

I. - The forestry investment company may not make a public offering unless it has :

- 1° Produced a prospectus that has received an AMF visa ;
- 2° Published a notice in the official gazette (BALO) ;
- 3° Produced a subscription application.

II. - The initial public offering shall be subject to :

- 1° Subscription of the initial capital by the founding partners ;
- 2° Authorization of the management company ;
- 3° Acceptance of the forest appraisers put forward ;
- 4° Approval of the bank guarantee referred to in Article 423-2.

#### Article 423-5

A prospectus shall be produced :

- 1° Before the initial public offering ;
- 2° If the difference between the subscription price of a share in a forestry investment company and the replacement value per share declared to the AMF is greater than 10 per cent ;
- 3° If material changes within the forestry investment company or the management company require amendments to the prospectus.

**Article 423-6**

The extraordinary general meeting must authorise any visa application on the basis of a report produced by the management company in the event of :

- 1° Issuance of new shares after a period of more than five years in which no increase in capital has occurred. In this event, the statutory auditor must review the management company's report ;
- 2° Changes to the initial investment policy.

**Article 423-7**

If the AMF deems that the prospectus no longer corresponds to the forestry investment company's true circumstances and after a formal demand to remedy the situation fails to produce results, the visa given to the prospectus shall be withdrawn.

The management company of the forestry investment company shall be notified of the reasoned decision to withdraw the visa and shall inform the supervisory board of the withdrawal.

This measure shall result in a ban on public offerings of shares in the forestry investment company.

**Article 423-8**

In the event of a capital increase, the issuance of new shares shall be announced in a notice produced in the form defined in an AMF instruction, before any advertising is made for subscriptions for new shares and before any subscriptions are accepted for the shares. The notice shall be published in the official gazette (BALO) six or more days before the subscription period starts.

The prospectus, circulars, posters and newspaper advertisements informing the public about the offering of shares or the issuance of new shares shall give prominent mention of :

- 1° The publication of the notice referred to in the first paragraph in the official gazette (BALO), along with the references of the edition in which it was published ;
- 2° The existence of the offering circular provided for by Article L. 412-1 of the Monetary and Financial Code.

Companies that have opted to be open-ended under the provisions of Article L. 231-1 of the Commercial Code shall publish a notice about the terms for subscriptions and redemptions each time these terms change (price, maturity, etc.), according to the same procedures and within the same time limits stipulated in the first paragraph.

The information contained in the notice shall also be sent to shareholders by ordinary mail six or more days before the first day of the subscription period.

**Article 423-9**

In the event that new shares are issued, before subscribing each subscriber shall receive a comprehensive dossier containing :

- 1° The articles of association of the company.
- 2° The current prospectus reviewed by the AMF, updated as appropriate and printed in easily legible type ;
- 3° The subscription application containing the information stipulated by an instruction ;
- 4° The most recent annual report ;
- 5° The most recent newsletter.

Any subscription for shares shall be made using a subscription application dated and signed by the subscriber or the subscriber's agent, who shall write out in words the number of shares subscribed. The subscriber shall receive a copy of the application.

**Section 3 - Operation****SUB-SECTION 1 - MANAGEMENT AGREEMENTS****Article 423-10**

The agreements concluded between the forestry investment company and its management company or any partner of the management company shall be approved by the ordinary general meeting of the partners.

The rate, calculation base and other components of the management company's compensation may be stipulated in the forestry investment company's articles of association. Failing this, the exact terms of the compensation shall be set out in a special agreement concluded between the management company and the forestry investment company that shall be approved by the latter's ordinary general meeting.

The terms of the management company's compensation shall be disclosed to subscribers in the prospectus reviewed by the AMF.

All the fees or compensation paid to the management company must be defined in the prospectus.

#### **Article 423-11**

I. - The management company's compensation shall consist of three types of fees :

- 1° A subscription fee, calculated on the basis of the sums received from capital increases ;
- 2° A transfer fee, calculated on the basis of the transaction amounts when transfers are made from the register provided for in Article 423-22, or when transfers are made free of charge or on a flat fee basis ;
- 3° A management fee, which shall be capped by applying a maximum rate to the market value of the assets under management. Different rates may be applied according to the category of assets concerned : directly held woodlands and forests, indirectly held woodlands and forests, cash and cash equivalents.

II. - The management fee shall cover expenses for :

- 1° Administration and bookkeeping ;
- 2° Keeping the register provided for in Article L. 214-59 of the Monetary and Financial Code ;
- 3° Drawing up basic management plans for directly held forestry assets ;
- 4° Partner information : producing annual reports and newsletters ;
- 5° Organising general meetings and supervisory board meetings ;
- 6° Organising and monitoring management of directly held woodlands and forests, vacant land, equipment and outbuildings (development, maintenance, improvement) ;
- 7° Negotiating and monitoring transactions involving trades, transfers and constitution of real rights provided for by Article R. 214-147 of the Monetary and Financial Code ;
- 8° Organising and monitoring harvesting operations in directly held woodlands and forests (marking and felling) ;
- 9° Incidental expenses arising from timber sales (invoicing, marketing) ;
- 10° Organising and managing related businesses and, more specifically, hunting rights ;
- 11° Monitoring and attending the general meetings of forestry groups and companies where the sole business is ownership of woodlands and forests and in which the forestry investment companies under management hold equity interests ;
- 12° Managing cash and cash equivalents.

III. - The management fee shall not include :

- 1° Insurance expenses ;
- 2° Appraisers' fees for the forestry appraisals provided for in Article 423-42 et seq. and statutory auditors' fees ;
- 3° Forestry operating costs and, more specifically, replanting costs, forest and infrastructure maintenance costs, and harvesting costs.

The articles of association of the forestry investment company and the prospectus shall give a precise description of the calculation base and rates used for the fees paid to the management company under the conditions set out in Article 423-10, the maximum management fee rate, the rate structure by asset category and a detailed description of the calculation procedures, rates and calculation bases for the sums actually charged by the management company according to the type of services provided with regard to directly held woodlands and forests.

The calculation bases used may be the market value of the assets under management, the cost of work carried out, net of tax, the charges, net of tax, invoiced for services performed during the financial year, the land area of properties covered by a basic management plan during the financial year and the amount of the ordinary management transactions provided for by Article R. 214-147 of the Monetary and Financial Code.

Any fees in excess of the maximum set out in the articles of association and the prospectus shall be submitted for the partners' approval at the general meeting of the forestry investment company.

## **SUB-SECTION 2 - SUPERVISORY BOARD**

### **Article 423-12**

The supervisory board shall give an opinion about the draft resolutions that the management company submits to the partners.

It shall refrain from taking any management action. In the event of default by the management company, the board shall immediately call a general meeting to choose a replacement.

### **Article 423-13**

At the general meeting voting on the financial statements for the third complete financial year, all members of the supervisory board shall be renewed in order to ensure the greatest possible representation of partners who are not linked to the founding partners.

### **Article 423-14**

The management company shall maintain strict neutrality in the conduct of operations involved in the appointment of members of the supervisory board.

Prior to calling the general meeting to elect the new members of the supervisory board, the management company shall make a call for candidates so that non-founding partners obtain the greatest possible representation.

During the election of members of the supervisory board, only the votes of partners present at the meeting and postal ballots shall be counted.

## **SUB-SECTION 3 - GENERAL MEETINGS**

### **Article 423-15**

The ordinary general meeting examining the annual financial statements shall take place at least once a year in the six months following the end of the financial year, unless this period is extended by a court order.

### **Article 423-16**

The management company, acting in the name of the forestry investment company, may contract loans, take on debts or make acquisitions against future payment, albeit subject to a maximum limit on the amounts.

The general meeting of the partners shall set this limit so that it is consistent with the forestry investment company's ability to pay on the basis of its ordinary revenues for loans and debts, and with its ability to borrow for acquisitions against future payment.

In the event of the sale of one or more of the company's forest properties without reinvestment of the proceeds, the general meeting shall have the sole authority to decide on the use of the proceeds from the sale for full or partial distribution with, as appropriate, redemption of the par value of the shares.

## **Section 4 - Disclosures by the forestry investment company**

### **Article 423-17**

I. - An AMF instruction shall stipulate the conditions for making disclosures to partners using printed matter ;

1° Prior to collating subscriptions : the prospectus reviewed by the AMF, the subscription application, the articles of association, the most recent annual report and the most recent quarterly statement shall be given to future partners ;

2° The annual report, newsletters and circulars.

II. - The management company shall send all the documents intended for the partners to the AMF immediately.

The management company shall send the AMF, according to the conditions set out in an instruction :

1° Half-yearly statistics in the month following the end of the half-year ;

2° Before 15 May of each year, the market value and replacement value of the forestry investment company, which must be submitted for the partners' approval ;

3° Any changes in these values over the year after their approval by the supervisory board, along with proof of the change in value.



**Article 423-18**

Each year, an annual report for the forestry investment company shall be compiled, including a management report, the financial statements and notes for the year, the supervisory board's report and the statutory auditors' reports.

The annual report shall review the key characteristics of the management company and the membership of the supervisory board.

**Article 423-19**

The management report submitted to the general meeting shall give an account of :

1° Management policy, specific problems encountered and the outlook for the company ;

2° Changes in capital and share prices ;

3° Changes and valuation of forest properties :

a) Acquisitions made and planned, transfers, trades, with information about the financial terms ;

b) As appropriate, the guidelines used for basic management plans or amendments produced during the financial year or planned for the next financial year ;

c) Works and harvesting carried out and planned under the basic management plans ;

d) As appropriate, planned works and harvesting that are not covered by the basic management plan for a forest property involving an amount, net of tax, that is 10 per cent greater than the most recent market value put on the property ;

e) As appropriate, ordinary management operations aimed at improving property access or structures, consolidation of fragmented properties, general interest operations and any other operation provided for by Article R. 214-147 of the Monetary and Financial Code ;

f) As appropriate, appraisals carried out by the forest appraiser and market valuations of equity interests in forestry groups and companies where the sole business is ownership of woodlands and forests held or acquired ;

4° Developments on the market for shares over the year ;

5° Developments in revenue from rentals, sales of wood, subsidies and other sources, and the proportions of these revenues in aggregate revenue ;

6° Changes in each type of cost incurred by the forestry investment company and, more specifically, fees. All the amounts comprising the management fee should be explained in detail and matched to the assets under management. The basis for calculating them must also be explained and duly commented upon ;

7° A summary statement of forestry assets at the end of the financial year, with an asset-by-asset presentation for :

a) Directly held forestry assets ;

b) Equity interests in forestry groups and companies where the sole business is ownership of woodlands and forests ;

c) Information about the location of directly and indirectly held forestry assets by natural region and by local administrative area (*département*), as well as whether these properties are covered by fire insurance ;

d) A summary of the appraisals and updates of appraisals carried out with information about which proportion of the forestry assets have been subject to appraisals or updates of appraisals during the year ;

8° Cash and cash equivalents and their use :

a) Cash proportion of the forestry investment company's assets and changes ;

b) Structure by investment type and changes.

**Article 423-20**

In the four months following the annual general meeting, a newsletter shall be disseminated with information about the major events for the company in the first half of the financial year.

## Section 5 - Shares

### SUB-SECTION 1 - TRANSFERS

#### Article 423-21

For the purposes of this section :

1° The term "order" referred to in Article L. 214-59 of the Monetary and Financial Code shall designate any buy or sell order relating to forestry investment company shares sent to the management company or an intermediary ;

2° The term "intermediary" shall designate any person other than the management company that is professionally qualified to receive a buy or sell order relating to forestry investment company shares ;

3° The term "person" shall designate a natural or legal person.

#### Article 423-22

To be valid, orders shall be recorded in a register kept at the registered office of the company in accordance with the conditions set out in an instruction issued for the purposes of this Chapter.

No time limits shall apply to sell orders.

The recording of buy and sell orders in the register referred to in the first paragraph of an open-ended forestry investment company shall constitute an adequate measure for the purpose of point II of Article L. 214-59 of the Monetary and Financial Code. The application of this measure shall have the effect of suspending redemption requests.

#### Article 423-23

The management company or the intermediary shall be required to provide any person who requests them with the five highest buy prices and the five lowest sell prices listed in the register, along with the quantities bid and offered at these prices.

As soon as orders are received by the management company or the intermediary, they shall be recorded so that it is possible to reconstitute the steps in the processing of each order and the various transactions executed.

#### Article 423-24

The intermediary shall ensure that orders comply with the specifications given in the instruction issued for the purposes of this Chapter before sending them to the management company.

The intermediary shall send the orders to the management company with no prior summing or netting of buy and sell orders.

#### Article 423-25

The management company may hedge its exposure by :

1° Making the recording of buy orders subject to a cash payment under conditions set out in the instruction issued for the purposes of this Chapter ; or

2° Setting a deadline for receiving cash payments, after which orders recorded in the register are cancelled if the funds are not paid. In this case, the funds must be received on or before the day before the execution price is set.

#### Article 423-26

The management company shall time-stamp the orders sent to it, after ensuring that they meet the requirements for recording in the register.

It shall record them in the register referred to in Article 423-22 in chronological order.

#### Article 423-27

Before setting the execution price, the management company shall ensure that there are no obstacles to the execution of sell orders.

In particular, it shall ensure that the seller is duly empowered to sell the shares and has enough shares to honour the sell order if it is executed.

**Article 423-28**

The management company may make a reasoned decision under its own responsibility to suspend the recording of orders in the register after so notifying the AMF.

If the suspension results from the occurrence of a major event that, if it became public knowledge, would have a significant impact on the execution price of shares or the partners' situation and rights, the management company shall cancel the orders recorded in the register and inform each of the persons giving the orders or the intermediaries individually.

The management company shall ensure full and effective public disclosure of the reasoned decision by all appropriate means.

**Article 423-29**

The management company shall fix the execution price periodically by matching the orders recorded in the register at regular intervals and at a set time.

It shall set the frequency with which execution prices are established, which must be at least once every six months and no more than once every business day. The prospectus shall mention the frequency.

**Article 423-30**

Changes in the frequency of price-setting must be warranted by market constraints.

The management company shall notify buyers, sellers, intermediaries and the public of such a change six or more days before it takes effect.

The procedures for public dissemination of such information shall be explained in the prospectus.

**Article 423-31**

The execution price shall be the price at which the greatest number of shares can be traded.

If several prices can be established on the basis of the first criterion at the same time, the execution price shall be the one that leaves the smallest number of shares untraded.

In the event that these two criteria fail to establish a single price, the execution price shall be the one closest to the last execution price.

The execution price and number of shares traded shall be made public by all appropriate means on the day the price is established.

If it is impossible to establish an execution price, the management company shall publish, under the conditions set out in the previous paragraph, the highest buy price and the lowest sell price, along with the number of shares offered at each of these prices.

**Article 423-32**

The orders shall be executed as soon as the execution price is established and solely at that price.

Buy orders recorded with higher prices and sell orders recorded with lower prices shall be executed first. Orders with identical price limits shall be executed in the order in which they were recorded in the register.

The management company shall immediately record the transactions executed in this way in the register of partners.

**Article 423-33**

The management company shall make the information about prices and numbers of shares contained in the order register available to the public. It shall take the necessary steps to reduce the time lag :

- 1° Between receiving orders and recording them in the register ;
- 2° In informing the persons giving the orders or the intermediaries.

It shall provide proof of the execution of orders and their transmission for the persons giving the orders or the intermediaries.

**Article 423-34**

Intermediaries shall take the necessary steps to reduce the time lag :

- 1° Between receiving orders and sending them ;

2° In informing the persons giving the orders.

They shall provide proof of the reception of orders and their transmission for the persons giving the orders and the management company.

#### **Article 423-35**

The documentary proof of the different steps referred to in Articles 423-33 and 423-34 must be retained for five years.

### **SUB-SECTION 2 - CASH AND CASH EQUIVALENTS**

#### **Article 423-36**

The articles of association and the prospectus shall specify the proportion of assets invested in cash and cash equivalents and the limits for changes in this proportion.

### **SUB-SECTION 3 - REDEMPTIONS**

#### **Article 423-37**

In open-ended forestry investment companies, requests for redemptions shall be notified to the management company by registered letter with acknowledgement of receipt.

As soon as they are received, such requests shall be recorded in the redemption request register and satisfied in chronological order.

#### **Article 423-38**

The management company of a company referred to in Article 423-37 shall determine the redemption price.

If the redemption is matched with a subscription, the redemption price cannot be higher than the subscription price less the subscription fee.

If the redemption is not matched, the redemption terms shall be set out in the articles of association and the prospectus. As appropriate, they must also mention the proportion of cash that cannot be used to redeem shares and the consequences of this limit.

#### **Article 423-39**

In the event that the redemption price falls, the management company shall notify the partners that have requested redemption of their shares no later than the day before the date on which the change takes effect by registered letter with acknowledgement of receipt.

If there is no response from the partners in the fifteen days following receipt of the registered letter with acknowledgement of receipt the redemption request shall be deemed to be valid at the new price. This information shall be included in the notice given in the letter.

#### **Article 423-40**

No new shares can be issued to increase the capital as long as the register referred to in Article 423-37 contains unfilled redemption requests at a price lower than or equal to the subscription price.

### **SUB-SECTION 4 - ADVERTISING AND PROMOTION**

#### **Article 423-41**

For the purpose of placing shares with the public, forestry investment companies shall be entitled to use any type of advertising, provided it indicates :

1° The number of the edition of the official gazette (BALO) that contains the notice ;

2° The name of the forestry investment company ;

3° The existence of the currently valid prospectus reviewed by the AMF, the visa date and number, and the locations where it can be obtained free of charge.

## Section 6 - Forestry appraisals

### Article 423-42

The market value and the replacement value of the forestry investment company shall be established by the management company at the end of each financial year on the basis of :

1° A valuation of the market value of woodlands, forests, vacant land to be planted, and the accessories and outbuildings listed in Article R. 214-145 of the Monetary and Financial Code, the assets of forestry groups and companies where the sole business is ownership of woodlands and forests and in which the forestry investment company holds at least 50 per cent of the equity interest. This valuation shall be made by one or more independent forest appraisers on the list of forest appraisers provided for in Article R. 171-9 of the Rural Code ;

2° The market value of equity interests held or acquired in forestry groups and companies where the sole business is ownership of woodlands and forests and in which the forestry investment company holds at least 50 per cent of the equity interest. This market value shall be provided in the form of a certificate or a written valuation by the manager of each forestry group or company where the sole business is ownership of woodlands and forests. The management company shall then ensure that the proposed market value of the shares held or acquired is representative of the market for shares during the financial year or else valued according to the rules that govern the valuation of forestry assets ;

3° The net value of other assets reported under the supervision of the statutory auditor.

Each forestry property must be appraised prior to acquisition and at least once every 15 years.

The appraisal shall be updated every three years by the forestry appraiser(s), unless exceptional events, works or harvesting require a new update sooner. An event shall be deemed to be exceptional if it affects more than 20 per cent of the land area of a forestry property or involves an amount that is greater than 20 per cent of the valuation.

A second appraisal shall be made after the tenth anniversary of the forestry investment company covering at least 20 per cent of the forest properties of the company each year, so that all the forest properties have been appraised by the end of the fourteenth year.

The brief of the independent forest appraiser(s) shall cover all the forest properties of the forestry investment company, except for the properties referred to in the second point of the first paragraph of this Article.

A newly appointed forest appraiser shall have the right to update appraisals conducted in the last fifteen years.

The appraisals must be made in compliance with the appropriate forest appraisal methods and recommendations, and in compliance with professional practices.

### Article 423-43

The appraiser(s) shall be appointed by the general meeting for a five-year term from the list of forest appraisers following the AMF's acceptance of the candidate put forward by the management company.

The appraiser put forward must be on the list of forest appraisers provided for by Article R. 171-9 of the Rural Code.

The AMF shall be entitled to require further information.

Unless the AMF asks for further information, the candidate shall be deemed to be accepted by the AMF two months after the filing of a full application.

Candidates for renewal of appraisers must be presented to the AMF at least three months before the end of the financial year.

If the AMF deems that, during the forest appraiser's term, the eligibility requirements are no longer being met, it shall so notify the management company, which shall then put forward a new candidate and propose the appointment of the candidate to the general meeting.

Similarly, if the forest appraiser is no longer on the list of forest appraisers provided for by Article R. 171-9 of the Rural Code, the management company shall so notify the AMF and put forward a new candidate and propose the appointment of the candidate to the general meeting.

### Article 423-44

An agreement must be concluded between the appraiser and the forestry investment company. This agreement shall define the appraiser's tasks and set the terms for the appraiser's compensation.

The appraiser shall make an undertaking to the AMF about the conditions for performing the appraiser's tasks and the nature of the services provided in a form letter set out in an AMF instruction.

## **Section 7 - Mergers between forestry investment companies and forestry groups operating under authorised basic management plans**

### **Article 423-45**

Mergers of one or more forestry investment companies with one or more forestry groups operating under authorised basic management plans shall be submitted to the AMF in accordance with the procedures set out in an AMF instruction.

These procedures shall differ depending on whether the merger involves one or more forestry investment companies making public offerings.

## **CHAPTER IV - REAL-ESTATE COLLECTIVE INVESTMENT SCHEMES (OPCIS)**

### **Section 1 - Common provisions**

#### **Article 424-1**

The provisions of this Chapter shall apply to all OPCIs governed by Section 5 of Chapter IV of Title I of Book II of the Monetary and Financial Code, as well as to their management companies and real-estate appraisers.

#### **Article 424-2**

The term “real-estate collective investment scheme (OPCI)” refers to either an limited liability real estate company with variable capital (SPPICAV) or a real-estate investment trust (FPI).

The term “holder” shall designate the holder of units in an FPI or shares in a SPPICAV.

#### **SUB-SECTION 1 - CONSTITUTION AND AUTHORISATION OF OPCIS**

#### **Article 424-3**

Constitution of a SPPICAV shall be subject to the provisions of Articles 411-3 and 411-4.

#### **Article 424-4**

The fund rules provided for by Article L. 214-132 of the Monetary and Financial Code shall specify the term of the FPI.

#### **Article 424-5**

Authorisation of an OPCI, which is provided for under Article L. 214-91 of the Monetary and Financial Code and, as appropriate, the authorisation of each subfund provided for under Article L. 214-146 of the said Code shall be subject to procedure referred to in point I of Article 411-5, with the exception of the third paragraph, in the case of a SPPICAV, and to the procedure referred to in point I of Article 411-7, with the exception of the third paragraph, in the case of an FPI.

#### **Article 424-6**

The marketing of shares or units in an OPCI and, where appropriate, its subfunds shall be subject to the requirements stipulated in Article 411-6 in the case of a SPPICAV and to the first paragraph of Article 411-9 in the case of an FPI.

#### **Article 424-7**

The full prospectus cited in Article 411-11 may provide for different categories of units or shares within the same OPCI or within the same subfund under the terms stipulated in Article 411-11, with the exception of 1°.

**SUB-SECTION 2 - OPERATING RULES****Paragraph 1 - Subscription and redemption terms****Article 424-8**

Shares and units in OPCIs shall be issued at any time at the request of the holders on the basis of the net asset value determined after the deadline for centralising subscription requests, plus :

- 1° The variable portion of the subscription fees referred to in Article 424-9 ;
- 2° Where applicable, the subscription fees.

OPCI shares and units shall be redeemed at any time at the request of the holders on the basis of the net asset value determined after the deadline for centralising redemption requests, minus any applicable redemption fees.

**Article 424-9**

Without prejudice to the provisions of Articles 314-77 and 314-78, the subscription fees shall include a variable portion to be kept by the OPCI to cover the fees and taxes related to the buying and selling of assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code.

The nature of this variable portion shall be explicitly mentioned in the simplified prospectus and the detailed memorandum of the OPCI.

**Article 424-10**

The simplified prospectus and the detailed memorandum of the OPCI shall indicate :

- 1° The time and date of the deadline for centralising subscription and redemption orders for units and shares in the OPCI ;
- 2° The date for determining the net asset value ;
- 3° The latest date at which the net asset value will be calculated and published.

The simplified prospectus and the detailed memorandum of the OPCI shall also indicate the maximum time lag between the date for centralising subscription and redemption orders and the date of delivery or payment of the units or shares by the depository. This time lag shall not be more than six months.

**Paragraph 2 - Temporary suspension of subscriptions and redemptions****Article 424-11**

The full prospectus shall define objective conditions that trigger a temporary closure of subscriptions, such as when a maximum number of units or shares has been issued, or a maximum amount of assets has been reached.

**Article 424-12**

If the collective investment scheme is reserved for a maximum of 20 holders, defined by the full prospectus, or for a category of investors whose characteristics are defined precisely in the full prospectus, the OPCI may cease issuing units or shares.

**Article 424-13**

If the option provided for in Article L. 214-126 and in Article L. 214-136 of the Monetary and Financial Code is exercised, the management company shall notify the AMF and the OPCI holders of the reasons and procedures for suspending redemptions on or before the date on which the suspension is implemented.

**Article 424-14**

The redemption of shares of the holders referred to in Article 214-101 of the Monetary and Financial Code may be suspended if provided for in the rules of the OPCI and if the redemption request is for more than 2 % of the units or shares in the OPCI. In this case, the full prospectus of the OPCI shall stipulate :

- 1° Objective conditions warranting non-execution of the holder's redemption requests ;
- 2° The management company's right and the conditions enabling it to split up the execution of the redemption request.

3° The holder information requirements.

**Paragraph 3 - Disclosure by unitholders or shareholders holding more than 10 % of the units or shares in the OPCl**

**Article 424-15**

Any holder acquiring more than 10% of the units or shares in an OPCl must notify the management company immediately.

This disclosure threshold shall be assessed on the basis of the number of units or shares issued by the OPCl.

The portfolio management company shall post the number of units or shares on its website each time it posts the net asset value.

**Paragraph 4 - Minimum net asset amount of the OPCl**

**Article 424-16**

If the assets remain under the amounts stipulated in Article D. 214-198 of the Monetary and Financial Code, the OPCl shall be wound up or subject to one of the transactions provided for in Articles L. 214-124 and L. 214-135 of the said code.

If the OPCl has subfunds, the provisions of this Article shall apply to each subfund.

**Paragraph 5 - Contributions in kind**

**Article 424-17**

Contributions in kind may consist only of the assets referred to in I of Article L. 214-92 of the Monetary and Financial Code, except for the assets mentioned in i of I of the said article.

The shareholder information referred to in Articles L. 214-124 and L. 214-135 of the Monetary and Financial Code shall be clear and accurate. It shall be effectively disseminated to the holders under the terms specified in an AMF Instruction.

**Paragraph 6 - Modifications to an OPCl**

**Article 424-18**

Two types of modifications can occur in the life of an OPCl :

1° Modifications that require authorisation, which are called “transfers” ; these are transformations, mergers/demergers, winding-ups and liquidations ;

2° Modifications that do not require authorisation, which are called “changes”.

The procedures for informing holders and the conditions under which holders can redeem their units or shares shall be set out in an AMF instruction.

***Sub-paragraph 1 - Transfers***

**Article 424-19**

An AMF instruction shall stipulate the conditions under which the AMF shall authorise transfers affecting an OPCl and its subfunds. The time limit for granting authorisation shall be eight business days.

**Article 424-20**

Any plans for mergers/demergers and takeovers involving one or more OPCls or one or more subfunds in an OPCl shall be decided upon by the board of directors or the executive board of the SPPICAV or by the management company of the FPI. The plans shall be submitted for the prior authorisation of the AMF under the conditions stipulated in Articles 424-3 to 424-5.



The plans for a merger or demerger shall stipulate, as appropriate, the name(s), the registered office(s), the company register number(s) of the SPPICAVs involved and the name(s) of the FPI(s) involved, as well as the name(s), registered office(s) and company register number(s) of the management company(ies).

They shall also specify the reasons, objectives and terms for the transaction, as well as the value of the real-estate assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code. They shall stipulate the date on which the extraordinary general meetings of the SPPICAVs involved shall vote on the exchange ratios for shares and units.

#### **Article 424-21**

The merger, demerger or takeover plans shall be filed with the registry of the commercial court having jurisdiction over the registered offices of the companies concerned.

The boards of directors or the executive boards of each of the companies concerned shall send the plans to the statutory auditors of each company and each SPPICAV concerned at least forty-five days before the extraordinary general meetings of the SPPICAVs vote on the transaction, or the date set by the boards of directors or the executive boards of the management companies of the FPIs concerned. The transaction shall be carried out by the boards of directors or the executive boards of the SPPICAVs concerned, or their agents, and, where appropriate, by the management companies of the FPIs, under the supervision of the statutory auditors of each of the OPCIs concerned. The statutory auditors' reports referred to in Article R. 214-209 of the Monetary and Financial Code shall be made available to holders fifteen or more days before the date set by the extraordinary general meetings, or, in the case of FPIs, by the management company(ies).

#### **Article 424-22**

The obligation to issue shares and units at any time may be suspended by a decision of the board of directors or the executive board of the SPPICAV, or the management company of the FPI up to fifteen days before the planned date of the transactions referred to in Article L. 214-124 of the Monetary and Financial Code. The articles of association of the SPPICAVs created by one of these transactions shall be signed by their legal representatives. The rules for FPIs shall be drawn up by the management companies.

The holders shall have six months in which to redeem their units or shares free of charge.

Holders who are not entitled to a whole number of units or shares as a result of the exchange ratio shall be able to redeem their fractional units and shares for cash or make a cash payment for the difference in order to receive a whole share or unit. Such redemptions and payments shall not be decreased or increased any redemption or subscription fees or commissions.

#### **Article 424-23**

If an OPCi or one of its subfunds is liquidated, the statutory auditor shall value the assets and produce a report on the liquidation terms and the transactions that have taken place since the end of the previous financial year. This report shall be made available to the holders and submitted to the AMF.

#### **Article 424-24**

When an OPCi has subfunds, the FPI rules or the articles of association of the SPPICAV shall stipulate the terms and procedures for distributing assets if the subfunds are liquidated.

#### **Article 424-25**

The liquidation terms and the procedures for distributing assets shall be set out in the FPI rules or the articles of incorporation of the SPPICAV. More specifically, the FPI rules or the articles of association of the SPPICAV may stipulate that the units or shares may be redeemed in kind if the liquidation is carried out by redeeming the units or shares.

If the minimum net asset requirement stipulated in Article L. 214-103 of the Monetary and Financial Code is no longer being met, the repayment of the holders shall be carried out within the following times, starting on the date of the transfer for liquidation :

1° Five days for an FPI and two months for a SPPICAV if they do not have any of the real-estate assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code ;

2° Twelve months in other cases.

### ***Sub-paragraph 2 - Changes***

#### **Article 424-26**

Real-estate collective investment schemes that undergo changes must report them to the AMF in accordance with the procedures set out in an AMF instruction.

### **Paragraph 7 - Supervisory board**

#### **Article 424-27**

The members of the supervisory board shall be elected by the unitholders in the FPI from among their own number.

In preparation for their election, the management company shall issue a call for candidates that shall be posted on its website and published in the periodical information document.

Unitholders in the FPI shall respond to the call for candidates via the management company's website within three months of its publication.

Candidates' applications shall include information proving their independence from the management company and its affiliates, as defined in Article R. 214-46 of the Monetary and Financial Code.

A natural or physical person may not sit on more than five FPI supervisory boards simultaneously. However, the FPI rules may stipulate a smaller number of board memberships.

Board membership shall be incompatible with the performance of any other function likely to give rise to a conflict of interest.

The FPI rules may set an age limit for members of the supervisory board.

#### **Article 424-28**

Unitholders shall elect the members of the supervisory board directly in accordance with the procedures stipulated by the fund rules.

Elections for the members of the supervisory board shall be held at least once every three years.

Unitholders may vote by correspondence.

#### **Article 424-29**

If the FPI rules stipulate that unitholders shall hold a meeting to elect the members of the supervisory board, the management company shall give unitholders notice of the meeting by letter or, subject to the unitholder's consent, by e-mail at least fifteen business days before the date of the meeting.

The notice of the meeting shall stipulate the procedures for voting by correspondence.

#### **Article 424-30**

The voting rights of each unitholder shall be proportional to the number of units in the FPI that they hold.

#### **Article 424-31**

If the number of candidates is not greater than the number of seats to be filled, the candidates shall automatically be appointed as members of the supervisory board.

#### **Article 424-32**

The term of office for a member of the supervisory board shall be three years and they may be re-elected twice.

If a member of the supervisory board dies or resigns, taking the number of members below that stipulated in the fund rules, the supervisory board shall nominate a member temporarily to fill the vacant seat until the end of former member's term of office.

This nomination shall be made within three months of the day on which the seat becomes vacant.

The candidates that received the largest number of votes at the previous election behind the members already sitting on the supervisory board shall be appointed.

The fund rules may stipulate that each election provided for in Article 424-27 lead to a partial replacement of the members of the supervisory board.

**Article 424-33**

At the first meeting held after the election of appointment of new members, the supervisory board shall elect its chairman by a simple majority of the votes.

**Article 424-34**

The fund rules shall set out the rules regarding the calling and holding of supervisory board meetings, along with the conditions under which a member of the board may be represented by another member at a meeting.

Each member shall be entitled to one vote. In the event of a tie, the Chairman shall have a casting vote.

**Article 424-35**

The supervisory board shall meet at least twice a year when called by the chairman or at the request of at least a third of the members.

The first meeting of the supervisory board after the OPC I is founded shall take place within twelve months of authorisation being granted to the OPC I.

The decisions of the supervisory board shall only be valid if at least one-half of the members are present.

The chairman shall set the agenda for the meeting, which may be supplemented at the request of another member up until the day before the meeting.

An attendance record shall be kept.

The decisions of the supervisory board shall be recorded in the meeting minutes.

**Article 424-36**

The full prospectus shall set out the maximum amount to be allocated each year to cover all of the expenditure related to the operation of the supervisory board.

Expenditures falling within this amount shall be covered by the OPC I on the basis of vouchers submitted to the management company by the chairman of the supervisory board.

The fund rules shall establish the list of expenditures covered, including :

- 1° Where appropriate, detailed information about the compensation paid to its members ;
- 2° Training costs for the members of the board.

**Article 424-37**

The supervisory board may ask the management company to provide a training course lasting two business days for the members of the board that have been sitting for less than one year.

**Article 424-38**

The management company shall provide the supervisory board with the premises necessary to hold meetings and the staff and technical resources for the board's secretariat.

**Article 424-39**

When compiling its reports, the supervisory board may ask the management company for any further helpful information. The management company shall be required to respond in writing within eight business days.

**Article 424-40**

The supervisory board's reports shall be approved by a simple majority of the members' votes.

**Article 424-41**

The supervisory board's reports shall be made available to holders in accordance with the conditions set out in the fund rules.

If a unitholder or shareholder asks to receive a hard copy of the report, the mailing costs may be charged to him.

## **Paragraph 8 - Valuation of the items recorded as the net assets of the real-estate collective investment scheme**

### **Article 424-42**

Assets other than those referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code shall be valued in accordance with Articles 411-27 to 411-30.

### **Article 424-43**

The management company shall value the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code each day that the net asset value is determined.

The valuation shall be made at market prices.

The management company shall establish formal, auditable procedures for substantiating the determined value.

### **Article 424-44**

The management company shall draw up a five-year work plan for the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code. The plan shall be updated at intervals suited to the characteristics of the assets and made available to the AMF.

If the management company does not comply with the work plan, it shall explain its reasons in the report mentioned in the third paragraph of Article L. 214-106 of the Monetary and Financial Code.

### **Article 424-45**

I. - The value of the real-estate assets referred to in *a* of I of Article L. 214-92 of the Monetary and Financial Code and the properties or rights *in rem* held directly or indirectly by the companies referred to in *b* and *c* of I in the same article and that meet the requirements set out in Article R. 214-162 of the Monetary and Financial Code shall be determined as follows :

1° At least four times a year and at intervals of three months, each asset shall be valued by two appraisers, who shall be designated by the management company, which shall specify their tasks. One of the appraisers shall determine the value of the asset and the other shall examine this value critically.

2° Once a year, each asset shall be appraised by a real-estate appraiser. Each appraiser shall appraise the same asset every other year alternately.

The management company shall draw up a plan specifying the procedures for applying this Article and submit it to the statutory auditor.

II. - To determine the value of the properties and rights *in rem* held directly or indirectly by the companies referred to in *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code and in the same article and that do not meet the requirements set out in 2° and 3° of Article R. 214-162 of the Monetary and Financial Code, the real-estate appraisers shall conduct a critical examination of the valuation methods used by the management company to determine the value of the assets and the relevance of the said value. This critical examination shall take place at least four times a year at three-month intervals.

### **Article 424-46**

The real-estate appraisers shall draw up a document for each real-estate asset referred to in *a* of I of Article L. 214-92 of the Monetary and Financial Code and the properties or rights *in rem* held directly or indirectly by the companies referred to in *b* and *c* of I in the same Article. This document shall specify :

1° The methodology used and the value determined by the appraiser determining the value of the asset, and the procedures and verifications carried out by the appraiser conducting the critical examination of the value, in the case of assets that meet the conditions set out in Article R. 214-162 of the Monetary and Financial Code.

The appraiser conducting the critical examination of the value shall submit this document to the management company, the depositary and, at the end of each calendar half year, and at the end of the accounting period, to the statutory auditor.

2° The procedures and verifications carried out by the appraisers in the case of assets that do not meet the conditions set out in Article R. 214-162 of the same Code.

The appraisers shall submit this document to the management company, the depositary and, at the end of each calendar half year, and at the end of the accounting period, to the statutory auditor.

**Article 424-47**

Each appraiser shall establish a procedure for reporting any difficulties encountered in the performance of their tasks. The depositary, the management company, the statutory auditor and the AMF shall be notified immediately of such difficulties.

**Article 424-48**

At the end of the year, the real-estate appraisers shall jointly produce the summary report referred to in Article L. 214-111 of the Monetary and Financial Code. This report shall be an account of all of their work over the year and the implementation of the procedure referred to in Article 424-45.

**Paragraph 9 - Other accounting and financial provisions*****Sub-paragraph 1 - Annual report of the real-estate collective investment scheme*****Article 424-49**

The annual report of the OPC I shall consist of :

- 1° The management report ;
- 2° The supervisory board's report ;
- 3° The annual accounts of the OPC I referred to in Article L. 214-106 of the Monetary and Financial Code ;
- 4° The statutory auditor's report stipulated in Article L. 214-110 of the said code.

If the OPC I is made up of several subfunds, an annual report shall be produced for each subfund. The annual report shall be posted on the management company's website within five months of the end of the accounting period. It shall also be submitted to the AMF within the same timeframe for posting on the AMF website.

**Article 424-50**

If the OPC I units or shares are denominated in different currencies, only one currency of account shall be used to record the assets of the OPC I or, where applicable, the subfund.

**Article 424-51**

The annual financial statements of the OPC I shall comply with the chart of accounts in force.

**Article 424-52**

The annual financial statements, the list of assets at the end of the financial year, the reports of the OPC I's statutory auditors and the report by the board of directors or the executive board of the SPPICAV, along with the report by the supervisory board, shall be made available for holders at the registered office of the management company. They shall be sent to any holders who request them within eight business days of receiving the request. Subject to the holder's consent, the documents may be sent electronically.

***Sub-paragraph 2 - Distributions*****Article 424-53**

The board of directors, or the executive board of the SPPICAV, or the management company of the FPI, shall determine the amounts and dates of the distributions stipulated in Articles L. 214-128 and L. 214-140 of the Monetary and Financial Code.

The board of directors or the executive board of the SICAV or the portfolio management company of the FCP may decide to distribute one or more advances on the basis of the balance sheet and income statement.

***Sub-paragraph 3 - Specific investment rules*****Article 424-54**

The foreign entities referred to in Article R. 214-170 of the Monetary and Financial Code shall comply with the criteria stipulated in Article 411-34 at all times, with the exception of 3°.

**Article 424-55**

If the OPC I is limited to twenty subscribers at most or to a category of investors referred to in Article 424-12 and invokes the derogation stipulated in Article R. 214-200 of the Monetary and Financial Code, the time period for redemption of the units or shares belonging to the entities referred to in 2° of this Article shall be sixty days at most.

**Article 424-56**

The investment limits set out in Articles R. 214-175 and R. 214-176 of the Monetary and Financial Code shall not apply if the OPC I invests in collective investment schemes that invest exclusively in the instruments referred to in 1°, 2° and 3° of Article R. 214-172 of the said code.

**Article 424-57**

The beneficiary's claim on the OPC I referred to in Article R. 214-189 of the Monetary and Financial Code shall be calculated using the procedures stipulated in Article 411-33-1.

The assets or rights constituting the guarantee granted by the OPC I referred to in Article R. 214-189 of the Monetary and Financial Code shall be valued using the procedures stipulated in Article 411-33-2.

The commitment of the OPC I referred to in Article R. 214-191 of the Monetary and Financial Code shall be calculated using the procedures stipulated in Articles 411-44-1 to 411-44-6.

**SUB-SECTION 3 - PUBLIC INFORMATION****Paragraph 1 - Full Prospectus****Article 424-58**

A full prospectus shall be produced for each OPC I in accordance with the provisions of Articles 411-45, 411-45-1 and 411-47 and submitted for the approval of the AMF.

In particular, the full prospectus shall describe the investment policy of the OPC I and its management objectives. An AMF instruction shall specify the contents of the full prospectus.

**Article 424-59**

The full prospectus shall describe all of the fees paid by the holders or by the OPC I, including all taxes, with information :

1° About the fees paid by holders :

- a) The maximum percentage of the subscription or redemption fee that is not kept by the OPC I ;
- b) The percentage of the commission that is retained by the OPC I and the conditions under which this percentage may be reduced.

2° About fees paid by the OPC I :

- a) The various fees and commissions connected to the management of the assets referred to in *a*, *b* and *c* of I of Article L. 214-92 of the Monetary and Financial Code ;
- b) The fees stipulated in 2° and 3° of Article 411-46 connected to the management of assets other than those referred to in *a*.

**Article 424-60**

If the OPC I has subfunds, the full prospectus shall describe the characteristics of the OPC I and of each subfund.

**Article 424-61**

The portfolio management company shall be responsible for the contents of the full prospectus as transmitted to the AMF for posting on its website.

## Paragraph 2 - Unitholder and shareholder information

### Article 424-62

The full prospectus, the net asset value, the most recent annual report and the most recent periodical information document must be posted on the management company's website.

If a person requests a hard copy of these documents, it shall be sent to him within one week of receiving the request and the mailing costs may be charged to him.

### Article 424-63

I. - The provisions of Articles 411-50 and 411-51, the first subparagraph of Article 411-52 and of Article 411-53-1 shall apply to the distribution of units or shares of the OPCl.

II. - Any person marketing units or shares of the OPCl shall ensure that the investor meets the subscription requirements stipulated in Article 424-12.

If the management company has signed a contract for the distribution of the OPCl units or shares, the contract shall stipulate the conditions under which investors shall have access to the detailed memo, the FPI rules or the articles of association of the SPPICAV, as well as the most recent annual report and the most recent financial statement of the OPCl.

### Article 424-64

OPClS must draw up a periodical information document at the end of each half year, as stipulated in Article 214-109 of the Monetary and Financial Code.

An AMF instruction shall specify the contents of this information document.

If the OPCl has subfunds, periodical information documents shall also be produced for each subfund.

The periodical information document shall be published within eight weeks of the end of each half year, or, where applicable, each quarter.

### Article 424-65

The management company shall post transactions in the OPCl securities carried out over the last twelve months to its website. The list of transactions concerned shall be specified in an AMF Instruction.

## Paragraph 3 - Net asset value

### Article 424-66

OPClS shall be required to determine their net asset value in compliance with the provisions of Paragraph 5 of Sub-section 2 of this Section. This net asset value shall be determined and published at intervals suited to the OPCl's management policy, the nature of the assets held and the nature of the subscribers. OPClS shall determine and publish their net asset value at least once every six months and at most twice a month.

If the full prospectus stipulates that the interval between two net asset values is greater than three months, the OPCl shall publish the estimated value referred to in Article 411-47 at least once every three months.

The full prospectus shall specify the intervals at which the net asset value is determined and published, as well as the schedule chosen.

Once the net asset value has been published, subscriptions and redemptions of units and shares in OPClS must be carried out on the basis of this value, under the conditions set out in the full prospectus.

This Article shall apply to each subfund.

### Article 424-67

The net asset value shall be sent to the AMF on the same day as it is determined in accordance with the procedures set out in an AMF instruction.

If an OPCl issues different categories of units or shares, the net asset value of the units or shares in each category shall be obtained by dividing the portion of net assets corresponding to the category of units or shares in question by the number of units or shares in that category.

The procedures for calculating the net asset values for categories of OPCIs units or shares shall be explained in the full prospectus.

Any changes are subject to authorisation by the AMF.

#### **Article 424-68**

The net asset value shall be obtained by dividing the net assets of the OPCI by the number of shares or units issued.

2 - OPCIs with simplified operating rules

#### **SUB-SECTION 1 - COMMON PROVISIONS APPLICABLE TO OPCIS WITH SIMPLIFIED OPERATING RULES**

#### **Article 424-69**

The provisions that are common to all OPCIs in Section 1 of this Chapter and Articles 413-5, 413-6, 413-7, 413-9 and 413-11 shall apply to the OPCIs with simplified operating rules referred to in Articles L. 214-144 and L. 214-145 of the Monetary and Financial Code.

OPCIs shall also be subject to the following provisions.

#### **Article 424-70**

Without prejudice to Article 424-14, the redemption of units or shares may be suspended if provided for in the articles of association or the rules of the OPCI with simplified operating rules in accordance with Article L. 214-145 of the Monetary and Financial Code. In this case, the simplified prospectus and the detailed memorandum shall indicate :

- 1° The conditions under which the OPCI with simplified operating rules may use this option ;
- 2° The procedures for implementing this option ;
- 3° The holder information procedures when redemptions of units or shares are suspended.

#### **SUB-SECTION 2 - UNLEVERAGED OPCIS WITH SIMPLIFIED OPERATING RULES**

#### **Article 424-71**

Subscriptions and purchases of units in unleveraged OPCIs with simplified operating rules shall be reserved for the investors stipulated in Article 413-13.

#### **Article 424-72**

*(deleted by the Order of 5 August 2008)*

#### **SUB-SECTION 3 - LEVERAGED OPCIS WITH SIMPLIFIED OPERATING RULES**

#### **Article 424-73**

Subscriptions and purchases of units in leveraged OPCIs with simplified operating rules shall be reserved for the investors stipulated in Article 413-35.

#### **Article 424-74**

*(deleted by the Order of 5 August 2008)*



## **TITLE III - OTHER COLLECTIVE SAVINGS PRODUCTS**

### **SOLE CHAPTER - MISCELLANEOUS ASSETS**

#### **Article 431-1**

The document relating to miscellaneous assets governed by Articles L. 550-1 to L. 550-5 of the Monetary and Financial Code, referred to in Article L. 550-3 of said Code, must include all the information that investors require to make an informed investment decision.

The contents of this document and the marketing and placement procedures for these assets shall be defined by an AMF instruction.



# GENERAL REGULATION OF THE AUTORITÉ DES MARCHÉS FINANCIERS



## BOOK V - MARKET INFRASTRUCTURES

### TITLE I - REGULATED MARKETS AND MARKET OPERATORS

#### CHAPTER I - RECOGNITION OF REGULATED MARKETS

##### Section 1 - Procedures for recognising regulated markets

###### Article 511-1

To obtain recognition for the market it intends to manage as a regulated market in financial instruments within the meaning of Article L. 421-1 of the Monetary and Financial Code, the market operator shall submit a file containing the following information to the AMF :

- 1° the items concerning the market operator, referred to in Article 511-2 ;
- 2° the items concerning the market, referred to in Article 511-3.

###### Article 511-2

The items concerning the market operator, referred to in Point 1°, Article 511-1, shall include :

- 1° its articles of association ;
- 2° its internal regulations (bylaws) ;
- 3° the *curricula vitae* of its directors and officers and of any other person likely to effectively direct the business and operation of the regulated market ;
- 4° the identity of persons who are in a position to exercise, directly or indirectly, significant influence over the management of the regulated market, as well as the amount of their holding.  
Shareholders who, alone or in concert, own directly or indirectly 10% or more of the capital or voting rights are deemed to exercise significant influence ;
- 5° a programme of operations setting out the organisation and resources of the operator with respect to the envisaged activity on the regulated market concerned, including the type of transactions envisaged and the human and technical resources that it has implemented or plans to implement ;
- 6° the latest annual accounts, where they exist, and the financial resources available to it when the regulated market is recognised ;

7° agreements, if any, for outsourcing the management of trading systems and information dissemination systems provided for under this Title.

#### **Article 511-3**

The market-related items referred to in Point 2°, Article 511-1 shall include :

1° market rules, including the conditions and procedures for consulting with market members and issuers whose financial instruments are admitted to trading on this market, if such rules are modified ;

2° a description of the arrangements for finalising transactions and the rules of the system or systems used for settlement and delivery of financial instruments, as well as the operating rules of the clearing house used by the market, where such is the case.

#### **Article 511-4**

The AMF shall ensure that the items forwarded to it in accordance with Article 511-2 comply with relevant laws and regulations. In particular it checks :

1° that the market operator is entitled to exercise the rights corresponding to the regulated market it manages ;

2° that the persons referred to in Point 4°, Article 511-2 are suitable to ensure the sound and prudent management of the regulated market ;

3° that the market operator has implemented :

a) arrangements for supervising trading on the regulated market it manages ;

b) arrangements for supervising market members ;

c) arrangements for ensuring on a continuous basis that it complies with the provisions applicable to it and to the regulated market it manages ;

d) arrangements for monitoring the compliance of its business and staff ;

4° that the market operator has made provisions in case the persons referred to in b) and d) of Point 3 fail to comply with their obligations.

Where the persons referred to in the third subparagraph of Article 511-2 are already directing the activities and operation of a regulated market of another Member State of the European Community or another State party to the European Economic Area agreement, they are deemed to be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management of the regulated market.

#### **Article 511-5**

Pursuant to Article L. 421-4 of the Monetary and Financial Code, the AMF shall seek the opinion of the Commission Bancaire on the organisation, the human, technical and material resources and the financial resources of the market operator.

#### **Article 511-6**

The AMF can ask the market operator to provide any additional information it deems useful for ensuring that all the arrangements are put in place to meet the obligations applicable to the market operator or the financial instrument market it intends to manage.

#### **Article 511-7**

The AMF shall reach a decision on the programme of operations referred to in Point 5°, Article 511-2 within three months of receiving the file or, where such is the case, the additional information it has requested.

#### **Article 511-8**

The AMF shall ensure that the items forwarded to it in accordance with Article 511-3 comply with relevant laws and regulations. In particular it checks that :

1° the rules of the market concerned comply with relevant laws and regulations ;

2° the market operator has made the necessary arrangements for ensuring that the market concerned meets the requirements of this General Regulation on a continuous basis ;

3° the market operator's human, financial and material resources under Points 5° and 6°, Article 511-2 are suitable for managing the regulated market concerned ;

4° the market operator has effective arrangements for ensuring the efficient and timely finalisation of transactions executed under the systems of the regulated market it manages.

#### **Article 511-9**

The AMF shall reach a decision on market rules within three months of receiving the file or, where such is the case, the additional information it has requested.

#### **Article 511-10**

Pursuant to Article L. 421-4 of the Monetary and Financial Code, the AMF proposes to the minister for economic affairs that the financial instrument market be recognised as a regulated market if it considers that all the conditions for recognition have been met.

#### **Article 511-11**

After the market has been recognised as a regulated market, and before commencing operations, the market operator shall inform the AMF that the resources referred to in Point 5°, Article 511-2 have been put in place.

#### **Article 511-12**

AMF decisions relating to the approval of the market rules shall be published in the official gazette (BALO) and on the AMF website. The approved rules shall be appended to the AMF decision.

Such publication shall take place after a new market has been recognised as a regulated market by the minister for economic affairs.

#### **Article 511-13**

The market operator shall publish the market rules on its website. It shall also permit any person wishing to refer to its market rules to do so at its registered office and to take away or receive, at that person's expense, a copy of those rules.

The rules of the systems and arrangements referred to in Point 2°, Article 511-3 shall be made accessible under the same conditions if they have not already been made public in accordance with this Book.

## **Section 2 - Changes in the conditions governing recognition of regulated markets**

#### **Article 511-14**

The market operator shall promptly inform the AMF of any changes to the items in the file that resulted in the financial instrument market being recognised as a regulated market.

The AMF shall determine the measures to be taken as a result of such changes, and in particular, whether the provisions of Article L. 421-5 of the Monetary and Financial Code shall apply.

#### **Article 511-15**

The market operator shall inform the AMF of any plans to change the identity of the persons referred to in Article L. 421-7 of the Monetary and Financial Code who effectively manage the market operator.

The AMF shall refuse to approve these changes where there are objective and demonstrable grounds for believing that they would pose a serious threat to the sound and prudent management and operation of the regulated market.

The AMF makes its ruling on these amendments within three months of receiving the request or, where such is the case, the additional information it has requested.

#### **Article 511-16**

Where they do not result directly from relevant laws and regulations, material changes to market rules shall give rise to a consultation with market members and issuers whose financial instruments are admitted to trading on this market, under arrangements appropriate to the type of changes envisaged.

A market operator submits for AMF approval any proposed amendments to the rules of the market it operates. Where appropriate, it shall append the findings of the aforementioned consultation to its application.

The AMF makes its ruling on the amendments in accordance with Article L. 421-10 of the Monetary and Financial Code. It gives its ruling within one month of receiving the request or, where such is the case, the additional information it has requested.

AMF decisions relating to the approval of rule amendments are published in the official gazette (BALO) and on the AMF website. The approved rules shall be appended to the AMF decision.

## CHAPTER II - ORGANISATIONAL RULES FOR MARKET OPERATORS AND RULES OF CONDUCT

### Section 1 - Organisational rules

#### Article 512-1

A market operator cannot delegate or outsource decisions concerning the admission of members or the listing of financial instruments referred to in Points 1° to 3°, Section I of Article L. 211-1 of the Monetary and Financial Code and equivalent financial instruments issued under foreign law.

Without the consent of the AMF, it cannot rely on a third party for the organisation of trading, the recording and publication of trades, the suspension of trading or the functions referred to in Article 512-7. A third party can be another market operator, a company directly controlled, within the meaning of Article L. 233-3 of the Commercial Code, by the market operator in question, or a company or economic interest grouping controlled directly by that operator and one or more other market operators.

The second paragraph shall not apply if the third party supplies the market operator with technical resources.

Reliance on a third party shall not under any circumstances relieve the market operator of its responsibilities.

#### Article 512-2

I. – Where derivative financial instruments are traded on the regulated market it manages, the market operator shall ensure that trades in such instruments are cleared through a clearing house or under arrangements allowing for orderly and secure finalisation.

II. - Where the market operator ensures that transactions in financial instruments admitted to trading on the regulated market it manages are cleared through a clearing house, such clearing house shall comply with the conditions applicable to clearing houses of regulated markets, as referred to in this Book, or with equivalent conditions if the clearing house is outside France.

### Section 2 - Conflicts of interest

#### Article 512-3

The market operator and the third party referred to in the third paragraph of Article 512-1 shall conduct their business diligently, fairly, neutrally and impartially, respecting the integrity of the market.

#### Article 512-4

The market operator shall establish and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size, organisation and businesses of the operator, including any multilateral trading facilities it manages.

#### Article 512-5

The conflicts of interest policy shall include the following content :

1° it must identify, with reference to the specific activities carried out by the market operator, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more of its members ;

2° it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

#### Article 512-6

The market operator shall keep and regularly update a record of the activities in which a conflict of interests entailing a material risk of damage to the interests of one or more of its members has arisen or, in the case of an ongoing activity, may arise.

### **Section 3 - Compliance rules for members of staff of the market operator**

#### **Article 512-7**

The market operator shall ensure that persons acting under its authority or on its behalf know that they are bound by the obligation of professional secrecy as provided for by law and on pain of the penalties prescribed thereunder.

Such persons may not use any confidential information in their possession other than to perform their duties at or on behalf of the market operator.

#### **Article 512-8**

The market operator shall draw up internal regulations establishing the rules of conduct applicable to persons acting under their responsibility or on its behalf.

These internal regulations shall stipulate the conditions in which a person may execute trades in financial instruments for his own account. They provide that persons with a function relating to the admission to trading of financial instruments or to market surveillance cannot trade for his own account in the financial instruments for which he is responsible. They give due regard to the provisions of Article 512-7.

### **Section 4 - Issuance of a professional licence to certain members of staff of a market operator and the conditions in which they perform their duties**

#### **Article 512-9**

The market operator shall appoint a person or persons to be responsible for the following :

- 1° supervision of trading ;
- 2° monitoring of market members ;
- 3° compliance monitoring of the market operator and its staff.

#### **Article 512-10**

The persons referred to in Article 512-9 shall have the requisite independence of decision-making as well as the technical and human resources needed to carry out their duties.

Such resources shall be commensurate with the size of the regulated market or markets managed by the market operator.

#### **Article 512-11**

The persons referred to in Article 512-9 shall hold a professional licence, issued by the AMF on the proposal of the market operator.

In preparation for the issuance of this licence, the market operator shall forward to the AMF, for each of the persons concerned, an application containing the items specified in an AMF instruction.

The AMF can ask the market operator or the persons concerned for any further information it deems appropriate.

The AMF shall reach a decision within one month of receiving the application or, where such is the case, the additional information it has requested.

#### **Article 512-12**

When the holder of a professional licence referred to in Article 512-11 ceases to perform the duties referred to in Article 512-9, the market operator shall inform the AMF, which withdraws the licence.

When the AMF withdraws the licence in accordance with an enforcement decision under Article L. 621-15 of the Monetary and Financial Code, it shall inform the market operator thereof.

#### **Article 512-13**

The person or persons referred to in Article 512-9 shall draw up a yearly report on the conditions in which they carry out their duties. This report shall be submitted to the executive body of the market operator, as well as to the AMF, no later than four months after the close of the financial year.

The report shall include :

- 1° a description of how supervision and monitoring are organised ;



- 2° a list of the tasks performed in carrying out these duties ;
- 3° any observations made by the responsible person ;
- 4° measures adopted as a result of such observations.

### CHAPTER III - MEMBERS OF REGULATED MARKETS

#### Article 513-1

The rules of the regulated market governing the admission of market members shall stipulate their obligations under :

- 1° the constitution and administration of the market operator ;
- 2° rules relating to transactions on the market ;
- 3° the professional requirements for the staff of investment services providers that are market members ;
- 4° the conditions referred to in Article L. 421-18 of the Monetary and Financial Code applicable to members other than investment services providers. These conditions establish, inter alia, the minimum capital or equivalent resources or guarantees required of these members for each regulated market ;
- 5° rules and arrangements for the clearing and settlement of transactions effected on the regulated market.

#### Article 513-2

The market operator shall ensure that the market member is authorised for the investment services it intends to provide on the regulated market, where such is the case.

Where the market rules provide for several categories of member, they shall stipulate the membership requirements for each category.

#### Article 513-3

Where a market member is based outside a State party to the European Economic Area agreement, admission is conditional on there being a cooperation and information sharing agreement between the AMF and the competent authority in the member's home country.

Notwithstanding the first paragraph, the market operator may enter into agreements with recognised markets, within the meaning of Article L. 423-1 of the Monetary and Financial Code and decree 90-948 of 25 October 1990, whereby the members of one market are recognised as members of the other market, and vice versa.

#### Article 513-4

The market operator shall provide the AMF with a list of members of the regulated market it manages, stipulating their home country. It shall promptly inform the AMF of any changes to the list.

#### Article 513-5

The market operator shall ensure that members comply with the rules governing the market.

The market operator shall conclude an agreement with each member whereby the member agrees to :

- 1° comply with market rules on a continuous basis ;
- 2° reply to any requests for information from the market operator ;
- 3° submit to on-site inspections by the market operator ;
- 4° rectify, at the behest of the market operator, any situation in which it no longer meets the membership requirements.

#### Article 513-6

Members of the regulated market shall enforce the obligations set forth in Section 6, Chapter IV, Title I of Book III when executing orders on a regulated market on behalf of their clients.

**Article 513-7**

The market rules may authorise a market member to outsource trading operations to another member.

In such an event, outsourcing in no way alters the market member's responsibilities to its clients.

**Article 513-8**

The market operator shall specify how it ensures, directly or indirectly, the availability of the necessary training for natural persons who are to become traders of financial instruments on its market.

**Article 513-9**

For transactions effected on the regulated market it manages, a market operator can oppose its members' choice of a financial instrument settlement and delivery system other than the one it proposes, in the following circumstances :

1° where the arrangements and links between this settlement and delivery system and any other system or infrastructure needed for efficient and cost-effective transaction settlement are not in place ;

2° where the AMF considers that the technical conditions for settling transactions effected on this regulated market by a settlement and delivery system other than the one proposed by the market operator would not permit the financial markets to function in a smooth and orderly manner.

**CHAPTER IV - PRINCIPLES FOR TRADING ON REGULATED MARKETS - TRANSPARENCY RULES****Section 1 - General provisions****Article 514-1**

The market rules shall set forth the conditions in which multiple third-party buying and selling interests are brought together within the market in a way that results in transactions in the financial instruments traded on the market's systems.

They shall also establish the manner in which prices are determined, as well as the functions likely to be carried out by market members.

**Article 514-2**

The market rules shall determine the categories of orders that members can execute.

They shall provide that market members must time-stamp orders upon receipt if these are placed by a client, and upon issue if the member is the issuer of the order.

The market rules shall specify the principles of priority that apply when orders at the same price and on the same side of the market (buy or sell) are presented at the same time on the market.

**Article 514-3**

The market rules shall establish the principles under which trading can be halted.

In particular, the rules shall specify the conditions for halting trading in a financial instrument whose price, during a single session or between two sessions, reaches one of the thresholds set by the market operator.

The market rules regulating price fluctuations shall take into consideration both the market model and the characteristics of the financial instruments traded on the market. The market operator must have the resources that enable it to verify the consistency of the prices resulting from transactions.

**Article 514-4**

The market rules shall specify the conditions in which the market operator can cancel erroneous or irregular trades. They also stipulate the arrangements for informing the market of any such cancellations.

## Section 2 - Transparency principles and publication of market information

### Article 514-5

For shares admitted to trading on a regulated market it manages, the market operator shall make public the buying and selling interests as well the size of the trading positions expressed at these prices, which are displayed by the systems of the regulated market.

This information shall be made public in accordance with the arrangements set forth in Regulation (EC) n° 1287/2006 of 10 August 2006.

The AMF waives the requirement for the market operator to make public the aforementioned information in the conditions set forth in Regulation (EC) n° 1287/2006 of 10 August 2006.

### Article 514-6

For transactions in shares admitted to trading on a regulated market it manages, the market operator shall publish the registered prices, quantities and times, in accordance with Regulation (EC) n° 1287/2006 of 10 August 2006.

The AMF shall authorise the market operator to delay publication of these transactions depending on their type or size, especially in the case of transactions that are large in scale compared with normal market size, as provided for and according to the arrangements set out in Regulation (EC) n° 1287/2006 of 10 August 2006. In this case, the conditions for delaying publication shall be stipulated in the market rules.

### Article 514-7

For non-equity financial instruments admitted to trading on a regulated market it manages and traded in accordance with Article 514-1, the market operator shall decide what information on buying and selling interests it will publish to ensure fair and orderly trading. This information shall be appropriate to the characteristics of the financial instruments concerned and to the arrangements for trading them.

### Article 514-8

For transactions in the financial instruments referred to in Article 514-7, the market operator shall publish information about prices and quantities within a time period suited to the traded instrument, the method of trading and the amount of the transaction.

This period shall be established in the market rules and shall make it possible to provide the market with adequate information.

Publication shall occur on or before the opening of the trading session on the third business day after the transaction date.

## Section 3 - Notification to the AMF

### Article 514-9

The market operator shall report daily to the AMF on the orders received from the members of the regulated market it manages and on the transactions effected on its systems, as specified in an AMF instruction.

### Article 514-10

The market operator shall retain data about the transactions effected on the regulated market it manages for at least five years. For each transaction, that information shall comprise :

- 1° the name of the financial instruments bought or sold ;
- 2° the quantity transacted ;
- 3° the date and time of the transaction ;
- 4° the price of the transaction ;
- 5° where such is the case, the indication that the transaction resulted from an order executed in accordance with Article 3 of Regulation (EC) n° 1287/2006 of 10 August 2006 ;
- 6° the name of the market member or members that executed the order.

## CHAPTER V - ADMISSION OF FINANCIAL INSTRUMENTS TO TRADING ON A REGULATED MARKET

### Article 515-1

The market operator shall establish procedures to regularly review the compliance with the admission requirements of the financial instruments admitted to trading on the regulated market it manages.

### Article 515-2

The market operator shall establish effective procedures to check that the issuers of the financial instruments referred to in Points 1° to 3°, Section I of Article L. 211-1 of the Monetary and Financial Code and of any equivalent foreign-law instruments admitted to trading on a regulated market it manages comply with the relevant provisions of Title II of Book II.

### Article 515-3

The market operator shall establish procedures that facilitate its members in gaining access to information published by issuers pursuant to Titles I and II of Book II.

## CHAPTER VI - SPECIAL PROVISIONS FOR CERTAIN MARKETS

### Section 1 - Orders with instructions for deferred settlement and delivery

#### Article 516-1

The market rules may authorise a buyer or a seller, following execution of such buyer's or seller's order on the market, to defer the payment of the funds or the delivery of the financial instruments until a date set by those rules. The buyer, who is irrevocably bound to pay for the financial instruments once his order has been executed, shall not be required to disburse the funds until the date, set by the market rules, on which the financial instruments are registered in his account.

The financial instruments shall belong to the market member, in whose account they are registered at the date set by the market rules, pending registration in the buyer's account. The seller, who is irrevocably bound to deliver the financial instruments once his order has been executed, shall deliver them only at the date set by the market rules on which his account is debited. He retains title to the financial instruments as long as they are registered in his account.

#### Article 516-2

The provisions of Articles 516-3 to 516-13 shall apply to authorised investment service providers receiving orders for deferred settlement and delivery as well as to custody account keepers.

Where the market rules provide for the possibility referred to in the first paragraph of Article 516-1, an investment service provider who receives an order for deferred settlement or delivery shall not accept it unless the investor remits a margin deposit, either in the provider's books or in the books of the custody account keeper if the provider does not perform that function.

#### Article 516-3

An investment service provider who does not keep his client's account cannot consent to transmit or execute an order for deferred settlement and delivery unless he is able, under an agreement with the client's custody account keeper, to ascertain that the necessary margin has been duly deposited with the custody account keeper before he transmits or executes that order..

The investment service provider who keeps the client's account shall be subject to the provisions of this section..

#### Article 516-4

The investment service provider shall be subject to the rules, set forth in an AMF instruction, governing the posting and composition of clients' mandatory margin deposits.

Margin is calculated as a percentage of the position and according to the type of assets. It shall be at least 20 per cent.

The margin rates referred to in the aforementioned instruction are minimum rates. Investment service providers are entitled to demand higher rates from any client.

**Article 516-5**

Should a client fail, within the required time period, to remit or top up the margin deposit or to fulfil the commitments arising from the order executed on his behalf, the investment services provider shall liquidate some or all of the client's commitments or positions.

The AMF can, where necessary, set more stringent margin deposit rules for a given financial instrument or market, either temporarily or permanently.

**Article 516-6**

Where a margin deposit consists of financial instruments, the investment services provider can legally refuse any such instrument that :

1° he considers he would be unable to realise at any time or on his own initiative ;

2° he deems will not provide adequate collateral, having regard to the type of position to be collateralised.

In any event, long positions in a given financial instrument cannot be collateralised with the same financial instrument.

**Article 516-7**

Cheques cannot be accepted as margin until they have been cashed.

**Article 516-8**

An investment service provider must be able to inform his client, upon request, of the value of the margin deposited under the three categories set forth in an AMF instruction and, pursuant to the same article, of the position that may be taken or the increase in an existing position that may be realised.

**Article 516-9**

The AMF can increase the minimum margin rates provided for in Article 516-4 for one or more designated financial instruments, as specified in that article. The new rates cannot come into force for at least two trading days after they have been published.

**Article 516-10**

Initial margin deposits are readjusted, if need be, in view of the daily marking to market of the position and the assets accepted as collateral therefor, so that the deposits comply at all times with the minimum regulatory requirement.

The investment services provider shall order the client, by any and all means, to top up or restore its collateral within one trading day.

If the collateral is not topped up or restored in due time, the investment services provider shall take the necessary measures so that the client's position is once again collateralised. Unless the provider and the client have agreed on a different procedure, the investment services provider shall begin by reducing the position before realising some or all of the collateral.

**Article 516-11**

Absent a contractual agreement, an investment services provider who wishes to increase the collateral on a client's position by higher rates than those provided for in an AMF instruction shall warn the client of the new rates by registered letter with return receipt. That letter shall be sent at least eight calendar days before the effective date of the increase.

**Article 516-12**

Where an investment services provider reduces a client's position or realises some or all of its collateral, pursuant to the third paragraph of Article 516-10, it shall send the corresponding trade confirmations and account statements to the client by registered mail with return receipt.

**Article 516-13**

Notwithstanding the first paragraph of Article 516-4, a member of a regulated market who does not hold the account of a client is not required to ascertain that margin has been deposited if the order is sent to him by an investment service provider acting as an order receiver-transmitter.

## **Section 2 - Corporate actions**

### **Article 516-14**

The market rules shall establish the procedures relating to the detachment of rights and other corporate actions that influence the price of financial instruments ; they shall also stipulate the respective claims of buyers and sellers.

The rules shall also lay down the procedures that issuers of financial instruments admitted to trading on the regulated market managed by the market operator must follow to inform the operator of such actions.

Where financial instruments are admitted to trading without the consent of the issuer, the market operator shall make the necessary arrangements for gaining access to this information.

## **Section 3 - Special provisions for derivatives markets**

### **Article 516-15**

An investment service provider who receives an order for execution on a regulated market in derivative financial instruments shall not accept such order unless the investor remits a margin deposit, either in the provider's books or in the books of the custody account keeper if the provider does not perform that function.

Such margin shall be equal to or greater than that required by the market rules, if called by market members, or that required by the clearing house rules, if called by clearing house members. The investment services provider shall be entitled at all times to call additional amounts from the client to bring margin to the level that it sets.

The client shall constitute or remit additional margin within the same time limits as those specified in the rules referred to in the second paragraph.

Should a client fail to constitute or remit additional margin within the time limit referred to in the third paragraph, the provider shall liquidate some or all of the client's commitments or positions.

## **Section 4 - Other provisions**

### **Article 516-16**

At the request of a market operator, the AMF can put in place an arbitration procedure to resolve disputes arising between the operator and its market members, between market members themselves, or between members and their clients.

### **Article 516-17**

Without prejudice to special regulatory provisions, where mandatory sales of the financial instruments referred to in Points 1° to 3°, Section I, of Article L. 211-1 of the Financial and Monetary Code and equivalent financial instruments issued under foreign law are effected through an investment services provider, said provider shall publish a notice stipulating the date of sale, the type and number of financial instruments for sale, the selling price and the arrangements for the sale. This information shall be published at least fifteen days before the sale in a publication that carries legal notices.

## **Section 5 - Provisions applicable to certain compartments**

### **Article 516-18**

The market undertaking may open a compartment for issuers applying to admit their financial instruments to trading on a regulated market without a public issue or sale if the equity securities or the securities that give or may give access directly or indirectly to the issuer's capital or voting rights are not already admitted to trading on a French regulated market.

Issuers may not ask for their financial instruments to be transferred off the compartment referred to in the first paragraph except in the case of a public issue or sale of financial instruments that entails the preparation of a prospectus.

### **Article 516-19**

Financial instruments admitted to trading on the compartment referred to in Article 516-18 may not be acquired by an investor other than a qualified investor, within the meaning of b) of Point 4 of II of Article L. 411-2 of the Monetary

and Financial Code, unless such investor takes the initiative to do so and has been duly informed by the investment services provider about the characteristics of the compartment.

## **TITLE II - MULTILATERAL TRADING FACILITIES**

### **CHAPTER I - GENERAL PROVISIONS**

#### **Article 521-1**

The provisions of this Title and of Chapters 1 and 2 of Title I of this Book shall apply to market operators managing a multilateral trading facility (MTF) referred to in Article L. 424-1 of the Monetary and Financial Code.

Except for Articles 521-3, 521-4, 521-6, 521-9 and 521-10, the provisions of this Title shall apply to investment services providers managing an MTF.

#### **Section 1 - Observations on the request for authorisation filed by investment services providers offering the service of operating a multilateral trading facility, and on authorisation by the market operator**

##### **SUB-SECTION 1 - AMF OBSERVATIONS ON THE REQUEST FOR AUTHORISATION FILED BY INVESTMENT SERVICES PROVIDERS OFFERING THE SERVICE OF OPERATING A MULTILATERAL TRADING FACILITY**

#### **Article 521-2**

In connection with the examination by the Comité des Établissements de Crédit et des Entreprises d'Investissement of the authorisation request for the service referred to in Point 8°, Article L. 321-1 of the Monetary and Financial Code, and before such authorisation is granted, the AMF shall examine the applicant's file in accordance with Article R. 532-1 of that Code.

The applicant shall append the information referred to in Points 1° and 5°, Article 521-3 to its file.

The AMF shall ensure that the intended resources are appropriate to the envisaged activities and that the rules of the MTF are consistent with the relevant provisions.

Once authorisation has been granted, the investment services provider shall publish the rules of the MTF on its website. It shall also permit any person wishing to refer to the facility's rules to do so at its registered office and to take away or receive, at that person's expense, a copy of those rules.

##### **SUB-SECTION 2 - AUTHORISATION BY THE MARKET OPERATOR**

#### **Article 521-3**

With a view to obtaining authorisation to manage an MTF, the market operator shall send the AMF a file comprising :

1° the operating rules of the MTF, referred to in Article 521-4 ;

2° a programme of operations setting out inter alia the types of business envisaged by and the organisational structure of the market operator, as well as the human and material resources implemented with respect to the envisaged activity, in particular the characteristics of the trading system, the arrangements for settlement and delivery of the financial instruments to be traded thereon and, where such is the case, the arrangements for clearing the transactions concluded on the facility ;

3° the latest annual accounts, where they exist, and the financial resources of the market operator with respect to the envisaged business ;

4° agreements, if any, for outsourcing the management of the facility ;

5° the arrangements for monitoring compliance by members with the rules of the facility.

#### **Article 521-4**

The rules of the facility shall establish :

1° the membership requirements. Where a market member is established in a State not party to the European Economic Area agreement, membership is conditional on there being a cooperation and information sharing agreement between the AMF and the competent authority in the member's home country ;

2° the category or categories of financial instruments that can be traded on the facility ;

3° the conditions that issuers must fulfil before their financial instruments are traded on the facility and, where appropriate, the necessary steps they must take ;

4° the conditions for trading financial instruments on the facility, in particular :

a) the arrangements for bringing together buying and selling interests, and the dates and opening hours for trading ;

b) the information given to members ;

c) the information made public concerning buying and selling interests and the transactions undertaken ;

d) the procedures for suspending trading ;

e) the time periods and conditions for finalising transactions ;

5° Where such is the case, the obligations for making periodic and ongoing financial disclosures by issuers with financial instruments traded on the facility ;

6° the responsibilities of members in the event of non-compliance with the rules of the facility.

#### **Article 521-5**

Where the persons running a regulated market are the same as those managing the MTF for which authorisation has been requested, such persons shall be deemed to be of sufficiently good repute and to have sufficient experience to ensure the sound and prudent management of the MTF.

#### **Article 521-6**

The AMF shall check that the documents or information referred to in Articles 521-3 and 521-4 comply with relevant laws and regulations, and in particular that the market operator has the resources and organisational structure suitable for the envisaged activity.

The AMF shall seek the opinion of the Commission Bancaire on the organisation, the human, technical and material resources and the financial resources of the market operator.

The AMF can ask the MTF manager to provide any additional information it deems useful.

It can demand any rule amendments or resource adjustments needed to ensure that the facility complies with this Title.

The AMF shall reach a decision on the authorisation request within three months of receiving the file or, where such is the case, the additional information it has requested.

#### **Article 521-7**

Once authorisation has been granted, the market operator shall publish the rules of the facility on its website. It shall also permit any person wishing to refer to the facility's rules to do so at its registered office and to take away or receive, at that person's expense, a copy of those rules.

### **Section 2 - Changes to the characteristics of the MTF and withdrawal of authorisations**

#### **Article 521-8**

The MTF manager shall submit rule amendments to the AMF at least once month before they are due to come into effect.

Where it considers that these amendments are inconsistent with MTF status, the AMF shall oppose their enforcement within one month. If the MTF manager is an investment services provider, the AMF shall inform the Comité des Établissements de Crédit et des Entreprises d'Investissement of its objection.

#### **Article 521-9**

Notwithstanding Article 521-7, a market operator authorised to manage an MTF shall inform the AMF of any amendments it intends to make to the items taken into account when its authorisation was granted.



The AMF shall inform the market operator of the possible consequences such amendments may have on its authorisation.

#### **Article 521-10**

The AMF shall withdraw the authorisation granted to a market operator where such operator :

1° does not make use of the authorisation within 12 months, expressly renounces the authorisation, or if the MTF has not operated over the previous six months ;

2° has obtained the authorisation by making false statements or by any other irregular means ;

3° no longer meets the conditions under which authorisation was granted ;

4° has seriously and systematically infringed the provisions applicable to it.

## **CHAPTER II - PRINCIPLES FOR TRADING ON MULTILATERAL TRADING FACILITIES**

### **Section 1 - Fair and orderly trading and market integrity**

#### **Article 522-1**

Where the rules of the facility provide for a membership or admission agreement between the manager and issuers, the manager shall make the necessary arrangements for ensuring that issuers comply with their contractual arrangements. The agreement shall specify the consequences of non-fulfilment of these obligations.

### **Section 2 - Publication of market information**

#### **Article 522-2**

For shares admitted to trading on a regulated market and traded on the facility, the MTF manager shall publish information about buying and selling interests, as provided for and according to the arrangements set out in Regulation (EC) n° 1287/2006 of 10 August 2006.

The AMF waives these requirements for the MTF manager in the conditions set forth in Regulation (EC) n° 1287/2006 of 10 August 2006.

#### **Article 522-3**

For transactions in shares admitted to trading on a regulated market and concluded on the facility, the MTF manager shall publish information as provided for and according to the arrangements set out in Regulation (EC) n° 1287/2006 of 10 August 2006.

The AMF authorises the MTF manager to delay publication of these transactions depending on their type or size, especially in the case of transactions that are large in scale compared with normal market size, as provided for and according to the arrangements set out in Regulation (EC) n° 1287/2006 of 10 August 2006. In this case, the conditions in which publication is delayed are stipulated in the facility's rules.

#### **Article 522-4**

For financial instruments other than shares admitted to trading on a regulated market, traded on the facility, the MTF manager shall publish information about buying and selling interests. That information shall be relevant in view of the characteristics of the traded financial instrument, in particular whether or not it is admitted to trading on a regulated market, the method used to trade it, and the number and type of facility members and final investors holding the financial instrument.

#### **Article 522-5**

For financial instruments other than shares admitted to trading on a regulated market, traded on the facility, the MTF manager shall publish information that is relevant in view of the characteristics of the traded financial instrument, in particular whether or not it is admitted to trading on a regulated market, the method used to trade it, and the number and type of facility members and final investors holding the financial instrument.

### **Section 3 - Clearing and settlement**

#### **Article 522-6**

The MTF rules referred to in Article 521-4 shall specify the settlement and delivery system or systems used to finalise transactions in financial instruments and, where such is the case, shall specify which clearing house clears the transactions concluded on the facility.

#### **Article 522-7**

The MTF manager shall put in place the necessary arrangements to facilitate the efficient finalisation of the transactions concluded on the facility.

The MTF manager shall clearly inform its users of their respective responsibilities for the finalisation of the transactions executed on the facility.

### **Section 4 - Rules of conduct**

#### **Article 522-8**

Where applicable, the MTF manager shall provide, or ensure that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded.

#### **Article 522-9**

The MTF manager shall establish and maintain a conflicts of interest policy that is specific to the business of the facility, particularly where it trades for own account on the facility it manages.

## **CHAPTER III - SUPERVISION OF THE FUNCTIONING OF THE MTF AND ITS MEMBERS**

### **Section 1 - Issuance of professional licences to some members of staff**

#### **Article 523-1**

The MTF manager shall appoint a person or persons to be responsible with the following :

- 1° supervision of trading ;
- 2° monitoring of MTF members.

Where managing an MTF is not its sole business, the investment services provider shall appoint a person other than the compliance officer to perform the functions referred to in Points 1° and 2°.

The market operator that manages an MTF may appoint the person or persons referred to in Article 512-9 to perform these functions in connection with the management of an MTF.

#### **Article 523-2**

The persons referred to in Article 523-1 shall have the requisite independence of decision-making as well as the technical and human resources needed to carry out their duties.

Such resources shall be commensurate with the size of the facility or facilities managed by the manager.

#### **Article 523-3**

The persons referred to in Article 523-1 shall hold a professional licence, issued by the AMF on the proposal of the manager, as provided for in Articles 512-9 to 512-13.

### **Section 2 - Supervision of MTF members**

#### **Article 523-4**

The MTF manager shall ensure that its members comply with the rules of the facility and shall put in place appropriate resources and procedures for this purpose.

It shall sign a membership agreement with each member, providing inter alia for :

1° the obligation for the member to comply at all times with the rules of the facility and their implementing measures, to answer all requests from the manager for information, to submit to on-site inspections by the manager and bring itself into line with requirements at the manager's request ;

2° the undertaking by the manager to take measures, in the event of poor performance or breach by the member of its contractual obligations, that may include suspension of the member or cancellation of the agreement.

#### **Article 523-5**

The MTF rules provide that members of the facility must time-stamp orders for financial instruments admitted to trading on a regulated market immediately if they are placed by a client or upon issue if the member is the issuer of the order.

### **Section 3 - Notification and record-keeping with respect to transactions**

#### **Article 523-6**

The MTF manager shall report daily to the AMF on the orders for financial instruments admitted to trading on a regulated market that it has received from the members of the facility and on the transactions concluded under the systems of that facility, as specified in an AMF instruction.

#### **Article 523-7**

The MTF manager shall notify the AMF of the transactions conducted on the facility as follows :

1° with regard to financial instruments admitted to trading on a regulated market, the manager shall notify the AMF of the prices, volumes and times of transactions concluded on its facility, as specified in an AMF instruction ;

2° with regard to financial instruments not admitted to trading on a regulated market, the manager shall notify the AMF according to the procedures established individually for each MTF.

The MTF manager shall indicate inter alia the identity of the members that effected the transaction, specifying whether they were trading for own account or for a third party if this is required under the rules of the facility.

#### **Article 523-8**

The MTF manager shall retain data about the transactions concluded on its facility for at least five years, as specified in Article 514-10.

## **CHAPTER IV - ORGANISED MULTILATERAL TRADING FACILITIES**

#### **Article 524-1**

Multilateral trading facilities are considered as organized multilateral trading facilities if :

1° their organizational rules are approved by the AMF at their request ;

2° they submit to the provisions of Book VI on market abuse ;

3° they report daily to the AMF, in accordance with an AMF instruction, with regard to the orders they receive from their members for financial instruments admitted to trading on the facility ;

4° they arrange for a standing market offer if the financial instruments they admit to the facility are those mentioned in point 1°, Section I, of Article L. 211-1 of the Monetary and Financial Code.

#### **Article 524-2**

The provisions common to all MTFs referred to in Chapters I to IV of this Title shall apply to organised MTFs.

MTFs shall also be subject to the following provisions.

#### **Article 524-3**

The information and documents to be sent to the AMF in accordance with Article 521-3 shall also relate to the arrangements implemented to monitor compliance with the obligations under Chapter IV, Title I of Book III and under Book VI.

**Article 524-4**

The manager shall notify the AMF without delay of any difficulties encountered in the performance of its obligations and of any facts known to them that may jeopardise the proper functioning of the facility.

They shall in particular provide the AMF without delay with all appropriate information where such facts may constitute market abuse as defined in Book VI as well as any failure by an issuer to comply with the obligations it has undertaken toward the managers in respect of financial disclosures.

**Article 524-6**

The rules of organised MTFs shall also establish :

1° the procedures to be implemented in the event of the acquisition of control of an issuer whose financial instruments are traded on these facilities ;

2° the arrangements put in place to monitor compliance by issuers and members with the obligations under Chapter IV, Title I of Book III and under Book VI.

**Article 524-7**

The agreement referred to in Article 522-1 shall also establish the obligations relating to the procedures to be implemented in the event of the acquisition of control of an issuer whose financial instruments are traded on an organised MTF.

**TITLE III - SYSTEMATIC INTERNALISERS****CHAPTER I - GENERAL PROVISIONS****Section 1 - Scope - Informing the AMF****Article 531-1**

Where an investment services provider carries on the business of systematic internalisation, within the meaning of Article 21 of Regulation (EC) n° 1287/2006 of 10 August 2006, it shall inform the AMF as soon as it is a systematic internaliser of a particular share, identifying the financial instrument or instruments concerned.

When it ceases to be a systematic internaliser of a share, it shall inform the AMF thereof no later than the day after it ceases this activity.

**Article 531-2**

Section 1 of Chapter II shall not apply to systematic internalisers that deal only in sizes above standard market size, as defined in Article 23 of Regulation (EC) n° 1287/2006 of 10 August 2006, in the particular share.

**Section 2 - Commercial policy****Article 531-3**

A systematic internaliser shall be allowed to decide, on the basis of its commercial policy and in an objective non-discriminatory way, the clients with which it trades. To that end, it shall have clear standards for establishing its commercial policy.

It may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the client's credit status, the counterparty risk and the final settlement of the transaction.

## CHAPTER II - PRE-TRADE TRANSPARENCY RULES

### Section 1 - Publication of quotes

#### Article 532-1

For the purposes of Article L. 425-2 of the Monetary and Financial Code, "liquid market" shall mean the market referred to in Article 22 of Regulation (EC) n° 1287/2006 of 10 August 2006.

#### Article 532-2

A systematic internaliser shall make public its quotes and quantities on a regular and continuous basis during the normal trading hours set out in Article 2 of Regulation (EC) n° 1287/2006 of 10 August 2006.

It shall be entitled to update its quotes and quantities at any time.

It shall also be allowed to withdraw its quotes and quantities under exceptional market conditions.

### Section 2 - Quotation procedures

#### Article 532-3

A systematic internaliser may decide the size or sizes at which it will quote.

The price or prices quoted by systematic internalisers shall reflect the prevailing market conditions for the share in question, in accordance with Article 24 of Regulation (EC) n° 1287/2006 of 10 August 2006.

## CHAPTER III - ORDER EXECUTION PROCEDURES

#### Article 533-1

A systematic internaliser shall execute orders received from its non-professional clients at the quoted price at the time of reception of the order.

#### Article 533-2

I. - A systematic internaliser shall execute orders received from the professional clients referred to in Article L. 533-16 of the Monetary and Financial Code and from the eligible counterparties referred to in Article L. 533-20 of the Code at the quoted price at the time of reception of the order.

II. - By way of derogation from I, a systematic internaliser may execute those orders at a better price than the quoted price, on condition that :

1° the use of such waiver is justified

2° the price falls within a public range close to market conditions ;

3° the order is of a size bigger than the size customarily undertaken by a non-professional client, as stipulated in Article 26 of Regulation (EC) n° 1287/2006 of 10 August 2006.

III. - By way of derogation from I, a systematic internaliser may execute this order at a price different than its quoted price in the following cases :

1° the order is for a portfolio trade and is part of one transaction, in accordance with Article 25 of Regulation (EC) n° 1287/ 2006 of 10 August 2006,

2° the order is neither an order for the execution of a transaction in shares at the prevailing market price nor a limit order, in accordance with the aforementioned Article 25.

#### Article 533-3

I. - Where a systematic internaliser who quotes only one quote or whose highest quote is lower than the standard market size receives a client order of a size bigger than its quotation size but lower than the standard market size, it may execute that part of the order which exceeds its quotation size, provided that this is executed at the quoted price, except as provided in Article 533-2.

For a particular share, each quote shall include a firm bid and/or offer price or prices, and a size or sizes that could be up to standard market size for the class of shares to which the share belongs.

II. - Where a systematic internaliser is quoting in different sizes and receives an order between those sizes, it shall execute the order at one of the quoted prices, in compliance with Article L. 533-19 of the Monetary and Financial Code, except as otherwise provided in Article 533-2.

#### **Article 533-4**

To limit the risk of being exposed to multiple transactions from the same client, a systematic internaliser shall be allowed to limit in a non-discriminatory way the number of transactions from the same client which it undertakes to enter at the published conditions, where it is able to execute those transactions without exposing itself to undue risk, in accordance with the conditions set out in Article 25 of Regulation (EC) n° 1287/2006 of 10 August 2006.

A systematic internaliser is allowed, in a non-discriminatory way and in accordance with Article L. 533-19 of the Monetary and Financial Code, to limit the total number or the amount of transactions from different clients at the same time where such number or such amount considerably exceeds the norm provided for in Article 24 of the aforementioned regulation.

## **CHAPTER IV - PUBLICATION OF TRANSACTIONS**

#### **Article 534-1**

A systematic internaliser shall publish the transactions it has effected, within the time periods and according to the arrangements set in Regulation (EC) n° 1287/2006 of 10 August 2006.

## **TITLE IV - CLEARING HOUSES**

### **CHAPTER I - COMMON PROVISIONS**

#### **Section 1 - Approval and publication of clearing house rules**

##### **Article 541-1**

Clearing houses submit their operating rules to the AMF for approval.

The AMF makes its ruling on the basis of the activities that the clearing house intends to perform and the resources and facilities that it intends to implement.

The AMF gives its ruling within three months of receiving the application or within one month in the case of amendments to existing rules.

##### **Article 541-2**

The AMF publishes decisions relating to the approval of a clearing house's operating rules, or amendments thereto, in the official gazette (BALO) and on its website. The approved rules or amendments are annexed to the AMF's decision.

##### **Article 541-3**

A clearing house must permit any person who so wishes to access its operating rules at its registered office and to take away or receive, at that person's expense, a copy of the said rules.

#### **Section 2 - Rules of conduct applicable to clearing houses and their staff**

##### **Article 541-4**

Clearing houses and the persons referred to in the second paragraph of Article 541-30 shall perform their activities diligently, honestly and impartially.

**Article 541-5**

The clearing house shall remind the persons acting under its authority or on its behalf that they are bound by the rules of professional secrecy, under the terms and penalties provided by law.

Such persons may not use any confidential information in their possession other than to perform their functions within or on behalf of the clearing house.

**Article 541-6**

Clearing houses shall draw up internal regulations establishing the rules of conduct applicable to persons acting under their responsibility or on their behalf.

These internal regulations shall stipulate the conditions in which a person may execute trades in financial instruments for his own account. They give due regard to the provisions of Article 541-5.

**Section 3 - Issuance of professional licences to certain members of clearing house staff****Article 541-7**

The clearing house shall appoint the following persons :

- 1° a person responsible for supervising clearing ;
- 2° a person responsible for supervising clearing house members ;
- 3° a head of compliance.

**Article 541-8**

The responsible persons referred to in Article 541-7 must have the requisite independence of decision-making as well as the technical and human resources needed to carry out their duties. The resources must be suited to the clearing house's volume of business.

**Article 541-9**

The responsible persons referred to in Article 541-7 are required to hold professional licences, which are issued by the AMF on the clearing house's proposal.

In preparation for the issuance of this licence, the clearing house shall forward to the AMF for each of the persons concerned, an application containing the elements specified in an AMF instruction.

The AMF can ask the clearing house or the persons concerned for any further information it deems appropriate.

The AMF rules within one month of receiving the application or, where such is the case, the additional information it has requested.

**Article 541-10**

The clearing house informs the AMF when the holder of a professional licence referred to in Article 541-9 ceases to perform the function requiring that licence.

The AMF then revokes the licence. The AMF informs the clearing house whenever it revokes a professional licence in connection with the disciplinary proceedings referred to in Article L. 621-15 of the Financial and Monetary Code.

**Article 541-11**

The responsible persons mentioned in Article 541-7 draw up a yearly report on the conditions in which they carry out their duties. This report is submitted to the executive body of the clearing house, as well as to the AMF, no later than four months after the close of the financial year.

This report includes :

- 1° A description of how supervision and monitoring are organised ;
- 2° A description of the tasks performed in carrying out these duties ;
- 3° Any observations made by the responsible person ;
- 4° Measures adopted as a result of such observations.

## Section 4 - Membership of clearing houses

### Article 541-12

The operating rules of each clearing house stipulate the conditions for membership.

Where the rules provide for several categories of member, they stipulate the membership requirements for each category.

### Article 541-13

Pursuant to 5 of Article L. 440-2 of the Monetary and Financial Code, prior authorisation from the AMF is required for membership of a clearing house by credit institutions and investment firms having their registered office in a State not party to the European Economic Area agreement, and by legal persons whose principal or sole purpose is the clearing of financial instruments and which are not established in metropolitan France or overseas administrative areas (*départements*).

The AMF shall ascertain that such organisations are subject in their home State to rules governing the conduct of clearing and supervision that are equivalent to those in effect in France.

Absence of objection by the AMF within one month of receiving the membership application forwarded by the clearing house shall imply authorisation.

Where the AMF requests further information from the applicant or the clearing house, this time period shall be suspended until such information is received.

### Article 541-14

The AMF enters into agreements with the competent authorities of the home State referred to in Article 541-13 in order to define the distribution of supervisory powers and facilitate the exchange of information needed to coordinate such supervision.

The AMF can extend the time period referred to in the third paragraph of Article 541-13 where this is warranted by the conclusion of an agreement with home State authorities.

An agreement may provide for an exemption from prior authorization for a category of institutions.

### Article 541-15

Where, in connection with its supervisory duties as defined in this Title, a clearing house ascertains that one of its members is not complying with the AMF's rules, it so informs the AMF.

### Article 541-16

The operating rules of clearing houses determine minimum capital requirements and, if need be, minimum guarantees required of members.

The minimum requirements may vary according to the category of member. If the need arises, they may be increased at the clearing house's behest.

At least once yearly, clearing members provide the clearing house with written information, including their financial statements and documents concerning any relevant guarantees. They inform the clearing house immediately should their capital or guarantees fall below the minimum requirement applicable to them.

### Article 541-17

The operating rules of clearing houses may require members to acquire, prior to admission, a minimum number of equity securities of the clearing house.

The minimum requirement may vary according to the category of clearing member.

### Article 541-18

Clearing houses ensure that members comply with their operating rules

Clearing houses conclude an agreement with each member whereby the member agrees to :

- 1° comply with the rules established by the clearing house at all times ;
- 2° reply to any request for information made by the clearing house ;
- 3° submit to inspections conducted by the clearing house ;



4° rectify, at the behest of the clearing house, any situation in which it no longer meets the conditions for membership.

#### **Article 541-19**

Clearing members conclude an agreement with each trader whose trades they clear.

The operating rules of clearing houses define the list of clauses that must appear in such agreements, which stipulate, inter alia, the procedures for registering trades and the procedure to be followed in the event of default by either signatory.

#### **Article 541-20**

The operating rules of clearing houses may authorise a clearing member to subcontract clearing operations to another clearing member.

The rules may also authorise a clearing member to subcontract clearing operations to an entity that it controls, or by which it is controlled, within the meaning of Article L. 233-3 of the Commercial Code, provided that such entity fulfils the conditions of Article 541-12 and submits to inspection by the clearing house in question.

A subcontracting agreement does not alter the liability of a clearing member vis-à-vis third parties with regard to the subcontracted activities.

#### **Article 541-21**

The clearing house shall specify the conditions in which it ensures, directly or indirectly, the availability of the necessary training for natural persons who are to fulfil clearing functions.

### **Section 5 - Clearing house functions**

#### **Article 541-22**

Clearing houses record the trades they are to clear.

Clearing houses supervise the commitments and positions of clearing members.

#### **Article 541-23**

Clearing houses calculate and call the sums of money that clearing members must remit to cover or guarantee their commitments or positions. Such sums encompass initial margin, variation margin and, generally, all types of security deposit.

The operating rules of clearing houses establish the principles for determining these sums as well as the assets or guarantees accepted in lieu thereof.

The funds deposited by clearing members with the clearing house to cover their commitments are invested in liquid assets with little risk of principal.

#### **Article 541-24**

The operating rules of clearing houses provide that, should a clearing member fail to fulfil its obligations with regard to the settlement of market transactions or to the security deposits referred to in Article 541-23, and in particular should it be the subject of any of the proceedings under Title II of Book VI of the Commercial Code, the clearing house can :

1° liquidate some or all of the commitments or positions taken by the defaulting clearing member for its own account, in the market conditions prevailing at the time. Subsequent to such liquidation, the clearing house can, if necessary, settle its remaining claims on the clearing member by means of the margin or other security deposits lodged by that member ;

2° transfer the positions of the defaulting clearing member's clients, together with the associated assets or guarantees, to another clearing member.

#### **Article 541-25**

The operating rules of clearing houses stipulate the method used by the clearing house to establish the settlement price or reference price which is used to calculate the sums referred to in Article 541-23 and also to settle commitments at maturity.

However, if the settlement price or reference price is set by the market operator, these provisions are included in the market rules.

## **Section 6 - Relations between clearing members and their clients**

### **Article 541-26**

The operating rules of clearing houses may contain provisions relating to the minimum amounts that clearing members must call from clients whose accounts they keep in order to cover or guarantee those clients' commitments or positions, as well as the assets or guarantees accepted in lieu thereof.

However, if the market rules so provide, such amounts may be called by the members of the regulated market whose trades are cleared by the clearing house.

A clearing house may require that its members transfer to it the amounts mentioned in the first paragraph of this article.

### **Article 541-27**

The operating rules of clearing houses provide that clearing members may at their own initiative liquidate some or all of the commitments or positions of a client that has not met its obligations with regard to the settlement of market transactions or to the security deposits referred to in Article 541-26, and in particular if it has been the subject of any of the proceedings under Title II of Book VI of the Commercial Code.

The rules stipulate, in particular, the procedures for winding up failed trades in the financial instruments referred to in points 1°, 2° and 3°, Section I, of Article L. 211-1 of the Financial and Monetary Code and in equivalent financial instruments issued under foreign law.

### **Article 541-28**

Clearing members enter into a written agreement with each of their clients, as provided in Article 321-68 of these General Regulations.

## **Section 7 - Miscellaneous provisions**

### **Article 541-29**

The operating rules of clearing houses stipulate the nature and scope of the guarantee that the clearing house gives to its members and, where appropriate, to their clients.

### **Article 541-30**

A clearing house cannot delegate or subcontract decisions concerning the admission of members or the admission of financial instruments to clearing.

Without the agreement of the AMF, it cannot delegate or subcontract the functions referred to in Articles 541-22 to 541-25, or those assigned to the persons referred to in Article 541-7. Such subcontractor or delegate can be either another clearing house or a company directly controlled, within the meaning of Article L. 233-3 of the Commercial Code, by the clearing house in question. With regard to the recording of trades, the subcontractor or delegate can be the market operator in question.

The restrictions set forth in the second and third paragraphs of this article do not apply where a clearing house entrusts a third party to provide it with technical facilities.

Under no circumstances can the subcontracting agreement or delegation relieve the clearing house of its responsibility for the functions concerned.

### **Article 541-31**

At the request of a clearing house, the AMF can put in place an arbitration procedure to resolve disputes arising between the clearing house and its members, between clearing members themselves, or between clearing members and their clients.

## **CHAPTER II - SPECIAL PROVISIONS APPLICABLE TO THE CLEARING HOUSES**

## OF REGULATED MARKETS

### Section 1 - General provisions

#### Article 542-1

The operating rules of clearing houses of regulated markets provide that clearing members are del credere agents with regard to the clients whose accounts they keep.

In their capacity as del credere agents, clearing members are answerable to the clearing house for their clients' commitments.

#### Article 542-2

The operating rules of clearing houses of regulated markets provide that the clearing house shall call the sums referred to in Article 541-23 and determine the settlement price or reference price referred to in Article 541-25 at least once each trading day. The rules further specify the time limit for remitting these sums to the clearing house.

#### Article 542-3

The operating rules of clearing houses of regulated markets contain the provisions relating to the minimum amounts referred to in the first paragraph of Article 541-26.

### **Section 2 - Special provisions regarding the clearing of trades in the financial instruments referred to in points 1°, 2° and 3°, Section I, of Article L. 211-1 of the Financial and Monetary Code and in equivalent financial instruments issued under foreign law**

#### Article 542-4

The operating rules of clearing houses of regulated markets in the financial instruments referred to in points 1°, 2° and 3°, Section I, of Article L. 211-1 of the Financial and Monetary Code and in equivalent financial instruments issued under foreign law provide that the payment of funds and delivery of financial instruments between clearing members shall take place reciprocally and simultaneously under the supervision of the clearing house.

#### Article 542-5

The operating rules of clearing houses of regulated markets in equity or debt securities provide that the clearing house can limit the positions of a client in a given financial instrument if the market situation of that financial instrument so requires.

The rules require clearing members to inform the clearing house, upon request, of the identity of their clients.

When a clearing house decides to limit a client's positions, it justifies its decision and informs the AMF thereof.

### **Section 3 - Special provisions applicable to the clearing of trades in derivative financial instruments**

#### Article 542-6

The operating rules of clearing houses define the way in which the clearing house records the positions of clearing members.

The rules identify at least two categories of account, which correspond to :

1° transactions made by the clearing member for its own account,

2° transactions made by the clearing member on behalf of its clients.

The clearing house calculates the sums referred to in Article 541-23 separately for each account category.

#### Article 542-7

The operating rules of clearing houses of regulated markets in derivative financial instruments establish the principles for delivery, if any, of financial instruments or commodities.

**Article 542-8**

Where the clearing house of a regulated market in derivative financial instruments guarantees to clients the performance of their trades, it monitors the exposure of those clients.

The operating rules of clearing houses require members to inform the clearing house, upon request, of the identity of the clients whose positions they record.

**Article 542-9**

The clearing house of a regulated market in derivative financial instruments sets the position limits and limits on risk exposure applicable to market members. It can also set limits applicable to all market participants.

When these limits are reached, the clearing house can decide to increase the amount of margin that the market member or client must deposit with the clearing member to cover or guarantee the positions that have been taken. The clearing house may also refuse to record any transaction that would increase the open position of the market member or client in question.

**TITLE V - CENTRAL DEPOSITORIES OF FINANCIAL INSTRUMENTS****Article 550-1**

The conditions for authorising central depositories and for approving their operating rules are set forth in this Title.

The functions of a central depository are to :

1° record in a specific account the entirety of the financial instruments making up each issue accepted for deposit by the depository ;

2° open current accounts for custody account-keepers, other central depositories and French and foreign institutions that the depository has accepted as members under the conditions set by its operating rules ; in the case of institutions from a country outside the European Economic Area, their membership must not have been opposed by the AMF within one month following the date at which the AMF was notified by the central depository ;

3° ensure the circulation of financial instruments by book-entry transfer from one account to another ;

4° verify that the total amount of each issue accepted by the depository is equal to the sum of financial instruments recorded on member accounts ;

5° take all steps necessary to enable the exercise of rights attached to the financial instruments recorded in current accounts,

6° transmit registration information regarding holders of financial instruments between members and issuers ;

7° issue certificates representing French-law financial instruments for use abroad.

A central depository may accept for deposit financial instruments for which it does not hold the account of the issue. In such a case, it must at all times make sure that the quantity of financial instruments deposited with it is equal to the sum of financial instruments recorded on the accounts of its members.

A central depository may organise and operate any system for the purpose of effecting delivery of financial instruments between its members as well as, if applicable, the corresponding cash payment, in accordance with the provisions of this Title.

**Article 550-2**

Any entity applying to be a central depository must be incorporated as a commercial company.

The applicant shall transmit to the AMF a filing that includes :

1° its articles of association,

2° its bylaws,

3° its operating rules,

4° the identity of any shareholders that directly or indirectly hold an interest greater than or equal to 10 per cent of its equity, as well as the amount of their interest ;

5° with regard to the activities in which it proposes to engage, a description of the human, technical and financial resources at its disposal or that it plans to commit, and in particular the resources assigned to risk management ;

6° the *curricula vitae* of its main executives,

7° the operating rules of any payment and settlement system it operates, if appropriate.

The AMF may ask the applicant to provide any additional information that the AMF deems useful.

The AMF shall ensure that the operating rules submitted to it comply with the provisions of these General Regulations and that all of the envisaged activities are compatible with the functions of a central depository.

The AMF shall approve the rules within three months from the date of receipt of the filing or the date of receipt of any additional information that was requested. For changes in the rules, the time period shall be reduced to one month. The approval decision shall be published in the official gazette (BALO) and on the AMF website. The approved rules shall be annexed to the decision.

#### **Article 550-3**

Central depositories promptly inform the AMF of any modification in the elements mentioned in points 1° to 6° of Article 550-2.

The AMF determines the measures to be taken as a result of such modifications.

#### **Article 550-4**

The central depository shall ensure adequate supervision of the performance of the functions specified in Article 550-1.

For this purpose, it appoints a supervisor responsible for ensuring compliance with the central depository operating rules approved by the AMF pursuant to Article 550-2.

#### **Article 550-5**

The supervisor referred to in Article 550-4 draws up a yearly report on the conditions in which he carries out his duties. This report is submitted to the central depository's executive body and to the AMF no later than four months after the end of the financial year.

The report includes :

- 1° a description of how supervision and monitoring are organised ;
- 2° a description of the tasks performed in carrying out these duties ;
- 3° any observations made by the supervisor ;
- 4° measures taken as a result of such observations.

#### **Article 550-6**

The supervisor referred to in Article 550-4 shall have the requisite independence of decision-making as well as the technical and human resources they need to carry out their duties.

The resources must be suited to the nature and volume of the business done by the central depository.

#### **Article 550-7**

Relations between the central depository and its members shall be governed by a membership agreement.

This membership agreement shall oblige members to :

- 1° respond to any request for information from the central depository ;
- 2° obey the operating rules of the central depository at all times ;
- 3° rectify any irregularity at the request of the central depository if the latter finds the member to be in breach of its rules, of current regulations, or of conditions of membership.

#### **Article 550-8**

If a central depository finds that one of its members is not in compliance with the rules set forth in this Title, it shall so inform the AMF.

The central depository shall communicate any information or any document requested by the AMF.

## TITLE VI - PAYMENT AND SETTLEMENT SYSTEMS FOR FINANCIAL INSTRUMENTS

### Article 560-1

In accordance with point 3°, Section VI, of Article L. 621-7 and Article L. 330-1 of the Financial and Monetary Code, the AMF shall determine the general principles of organisation and operation of payment and settlement systems for financial instruments and shall approve the operating rules of such systems, without prejudice to the authority conferred upon the Banque de France by Chapter I, Title IV, Book I of the Financial and Monetary Code.

The principal function of a payment and settlement system for financial instruments is to process the instructions of its participants in order to ensure delivery of the financial instruments by the central depository concerned and simultaneous payment, where applicable, on the books of the payment agent.

The participants in a payment and settlement system are account-keeping institutions, central depositories, and other French and foreign institutions ; in the case of institutions from a country outside the European Economic Area, their membership must not have been opposed by the AMF within one month following the date at which the AMF was notified by the system.

### Article 560-2

Any entity wishing to operate a payment and settlement system for financial instruments must be incorporated as a commercial company. If it has not already addressed to the AMF the items referred to in Article 550-2, the applicant shall transmit to the AMF a filing that includes :

1° its articles of association ;

2° its bylaws ;

3° the operating rules of the system ;

4° the identity of any shareholders that directly or indirectly hold an interest greater than or equal to 10 per cent of its equity, as well as the amount of their interest ;

5° with regard to the activities in which it proposes to engage, a description of the human, technical and financial resources at its disposal or that it plans to commit, and in particular the resources it devotes or intends to devote to risk management ;

6° the *curricula vitae* of its main executives ;

7° the names of the classes of financial instruments accepted in the system and the method of custody of each class.

The AMF may request that the applicant provide any additional information that the AMF deems useful.

The AMF shall verify that the system meets the definition given in Article L. 330-1 of the Financial and Monetary Code and that the rules submitted to it comply with the provisions of these General Regulations governing payment and settlement systems for financial instruments. It shall also verify that the applicant has or plans to have at its disposal suitable resources for operating a payment and settlement system for financial instruments.

The AMF shall approve the rules within three months from the date of receipt of the filing or the date of receipt of any additional information that was requested. For changes in the rules, this time period shall be reduced to one month. The approval decision shall be published in the official gazette (BALO) and on the AMF website.

The approved rules shall be annexed to the decision.

### Article 560-3

The operator of a payment and settlement system promptly informs the AMF of any modification relating to the elements referred to in points 1° to 7° of Article 560-2.

The AMF determines the measures to be taken as a result of such modifications.

### Article 560-4

The operator of a payment and settlement system shall ensure adequate supervision of the performance of the functions specified in Article 560-1.

For this purpose, it appoints a supervisor responsible for ensuring compliance with the operating rules approved by the AMF pursuant to Article 560-2.

**Article 560-5**

The supervisor referred to in Article 560-4 draws up a yearly report on the conditions in which he carried out his duties. This report is submitted to the executive body of the operator of the payment and settlement system, and to the AMF no later than four months after the end of the financial year.

The report includes :

- 1° a description of how supervision and monitoring are organised ;
- 2° a description of the tasks performed in carrying out these duties ;
- 3° any observations made by the supervisor ;
- 4° measures taken as a result of such observations.

**Article 560-6**

The supervisor referred to in Article 560-4 shall have the requisite independence of decision-making as well as the technical and human resources he needs to carry out their duties.

The resources must be suited to the nature and volume of the business done by the operator of the payment and settlement system for financial instruments.

**Article 560-7**

Relations between the operator of a payment and settlement system for financial instruments and the participants in that system shall be governed by a participation agreement.

This participation agreement shall oblige participants to :

- 1° obey the operating rules of the system at all times ;
- 2° respond to any request for information from the system operator ;
- 3° rectify any irregularity at the request of the system operator if the latter finds the participant to be in breach of its rules, of current regulations, or of the conditions of participation.

**Article 560-8**

The operator of a payment and settlement system for financial instruments shall engage in no other activity that may create a conflict of interest with the operation of the said system.

**Article 560-9**

The operator of a payment and settlement system for financial instruments shall implement the procedures necessary to ensure that the number of financial instruments corresponding to each issue is identical to the number of financial instruments in circulation.

**Article 560-10**

A payment and settlement system for financial instruments must have appropriate risk management procedures to safeguard the rights of system participants in the event of a default on delivery or payment by one or more participants.

**Article 560-11**

The operating rules of a payment and settlement system for financial instruments shall establish the conditions, including the time, under which an instruction in the system is considered to be irrevocable, in accordance with Article L. 330-1 of the Financial and Monetary Code.

The operating rules of a payment and settlement system for financial instruments referred to in Article L. 330-1 of the Financial and Monetary Code shall also determine the conditions under which the settlement of transactions effected outside a regulated market and pertaining to financial instruments kept on account with a custody account-keeper participating in such payment and settlement system shall be deemed irrevocable within the meaning of Article L. 431-2 of the Code.

## **TITLE VII - TRANSFER OF OWNERSHIP OF FINANCIAL INSTRUMENTS ACCEPTED BY A CENTRAL DEPOSITORY OR SETTLEMENT SYSTEM**

### **Article 570-1**

As soon as an order is executed, the buyer is definitively bound to pay for, and the seller is definitively bound to deliver, the financial instruments at the date mentioned in Article 570-2.

The service provider to which the order is transmitted may, upon receipt of the order or as soon as it is executed, require that a guarantee provision be made in its books, in cash in the case of a purchase and in financial instruments in the case of a sale.

### **Article 570-2**

For a trade involving financial instruments mentioned in points 1, 2 and 3 of I of Article L. 211 of the Financial and Monetary Code, on a market mentioned in Title or Title II of Book V, the transfer of ownership mentioned in Article L. 431-2 of the Financial and Monetary Code shall result from the entry of the transaction in the account of the buyer. This account entry takes place on the effective trade settlement date specified in the operating rules of the settlement system, when the account of the buyer's custody account-keeper, or the account of the agent of this custody account-keeper, is credited on the books of the central depository.

Barring the exceptions provided for in Articles 570-3 to 570-8 and 322-65, the date on which the trade is effectively settled and, simultaneously, the account entry is made at the central depository, shall occur three trading days after the order execution date.

The same date shall apply when the financial instruments of the buyer and the seller are recorded on the books of the same custody account-keeper.

### **Article 570-3**

The trade shall be recorded in the accounts of the buyer and the seller as soon as the custody account-keeper is informed that the order has been executed. This accounting record shall be regarded as book entry registration and imply transfer of ownership as of the date mentioned in Article 570-2.

In the case of a sale that is not settled in full within a time period set by the rules of the clearing house or the settlement system, the accounting record shall be cancelled.

In the case of a partial settlement affecting multiple buyers, the accounting records shall be cancelled in part in proportion to the rights of each buyer.

Such cancellation of accounting records shall be without prejudice to action brought by the parties concerned.

### **Article 570-4**

In the case of a transaction covered by Book II, the initiator of the transaction shall specify the date on which entries will be made in the accounts of the buyers and sellers and the corresponding movements will be made in the accounts kept in the name of the custody account-keepers on the books of the central depository, in compliance with the rules of the market or multilateral trading facility concerned.

### **Article 570-5**

The operating rules of a market or multilateral trading facility may provide that, for some types of transactions, the date on which entries are made in the buyers' accounts and, simultaneously, the corresponding movements are made in custody account-keepers' accounts at the central depository shall be less than three trading days after the trading date.

### **Article 570-6**

For trades on a regulated market or multilateral trading facility, the buyer shall have title from the day of order execution to any financial rights detached between the trade date and the date of entry in the buyer's account.

By exception, the rules of a regulated market or multilateral trading facility may provide that, for some or all of the debt securities admitted to trading thereon, the buyer shall have title to such rights only after ownership of the said financial instruments has passed to him.



**Article 570-7**

When, following a sale of financial instruments, payment and delivery are effected by a system that provides continuous settlement finality, the parties shall agree on the date on which the settlement transactions are scheduled to be made, within the limits allowed by the operating rules of the system.

**Article 570-8**

In the case of a sale made outside a market mentioned in Title I or Title II of Book V, or an equivalent trade, as specified in an AMF instruction, and excluding the case provided for in Article 570-7, the transfer of ownership referred to in Article L.431-2 of the Financial and Monetary Code results from entry in the account of the buyer, which takes place when the account of the buyer's custody account-keeper is credited on the books of the central depository.

This account entry date shall occur no earlier than three trading after the sale date, unless the parties agree otherwise.

The same date shall apply when the financial instruments of the buyer and the seller are recorded on the books of the same custody account-keeper



# GENERAL REGULATION OF THE AUTORITÉ DES MARCHÉS FINANCIERS



## BOOK VI - MARKET ABUSE : INSIDER DEALING AND MARKET MANIPULATION

### TITLE I - GENERAL PROVISIONS

#### CHAPTER 1 - SCOPE

##### **Article 611-1**

Unless otherwise specified, this Book shall apply to :

1° All natural or legal persons and other entities ;

2° The financial instruments referred to in Article L. 211-1 of the Financial and Monetary Code :

a) which have been admitted to trading on a regulated market within the meaning of Article L. 421-1 of the same Code or for which a request for admission to trading on such a market has been made ; or

b) which have been admitted to trading on an organised multilateral trading facility referred to in article 524-1.

c) which have been admitted to trading on a regulated market of another European Community Member State or a State party to the European Economic Agreement, or, in the cases referred to in d) of point II of Article L. 621-15 of the Financial and Monetary Code, for which an application for admission to trading on such a market has been made ;

3° Transactions in instruments referred to in point 2° a), regardless of whether they have been executed on a regulated market, and transactions executed on an organised multilateral trading facility.

Articles 622-1 and 622-2 shall also apply to financial instruments not admitted to trading on a regulated market or an organised multilateral trading facility, but whose value depends on a financial instrument that has been admitted to trading on such a market or multilateral trading facility.

#### CHAPTER 2 - ACCEPTED MARKET PRACTICES

##### **Article 612-1**

"Accepted market practices" shall mean practices that are reasonably expected on one or more financial markets and are accepted by the AMF.

**Article 612-2**

I. - When assessing whether a market practice is acceptable, the AMF shall take at least the following criteria into account :

- 1° the level of transparency of the relevant market practice to the whole market ;
- 2° the need to safeguard the operation of market forces and the interplay of supply and demand ;
- 3° the degree to which the relevant market practice has an impact on market liquidity and efficiency ;
- 4° the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice ;
- 5° the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the European Community ;
- 6° the outcome of any inspection or investigation of the relevant market practice by the AMF, by any other authority or market operator with which the AMF cooperates, by any other authority or market undertaking acting on behalf or on the authority of the AMF, or by the courts acting on a referral from the AMF, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the European Community ;
- 7° the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of non-professional investor participation in the relevant market.

Having regard to point 2°, the AMF takes account in its assessment of how the relevant practice will affect market conditions, with particular reference to daily weighted average prices or daily closing prices.

II. - The AMF periodically reviews accepted market practices, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructure.

**Article 612-3**

Where an organisation representing companies making public offers of securities, investment service providers, investors or a market operators seeks the AMF's acceptance of a market practice, the AMF shall consult the other organisations concerned before deciding whether to accept or reject such practice.

The AMF shall also consult other competent authorities in respect of existing practices, notably on markets that are comparable in terms of structures, volumes or types of transaction.

Where inspections or investigations of specific cases have already started, the consultation procedure referred to in the first and second paragraphs may be delayed until the end of such inspections or investigations and possible related sanctions.

A market practice that was accepted following the consultation procedure shall not be changed without using the same procedure.

Where appropriate, an AMF instruction shall specify the arrangements for implementing the market-practice acceptance procedure.

**Article 612-4**

The AMF publishes its decision to accept or reject a market practice in the official gazette (Bulletin des Annonces Légales Obligatoires, BALO) and on its website, together with an appropriate description of such practice. It describes specifies the factors taken into account in determining whether the practice is regarded as acceptable, in particular where different conclusions have been reached regarding the acceptability of the same practice on comparable markets of other Member States of the European Community.

The Committee of European Securities Regulators shall be informed as quickly as possible of the AMF's decision.

## TITLE II - INSIDER DEALING

### CHAPTER 1 - INSIDE INFORMATION : DEFINITIONS

#### Article 621-1

Inside information is any information of a precise nature that has not been made public, relating directly or indirectly to one or more issuers of financial instruments, or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of the relevant financial instruments or on the prices of related financial instruments.

Information is deemed to be precise if it indicates a set of circumstances or event that has occurred or is likely to occur and a conclusion may be drawn as to the possible effect of such set of circumstances or event on the prices of financial instruments or related financial instruments.

Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments is information that a reasonable investor would be likely to use as part of the basis of his investment decisions.

#### Article 621-2

For commodity derivatives, inside information shall mean precise information that has not been made public, that concerns, directly or indirectly, one or more such derivatives, and that users of markets on which the derivatives are traded would expect to receive, in accordance with accepted practices in such markets, where such information :

1° is routinely made available to their users ; or

2° is made public, pursuant to law, market rules or regulations, contracts or customary practice on the market in the underlying commodity or on the market in the relevant commodity derivative.

#### Article 621-3

For persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

### CHAPTER 2 - ABSTENTION REQUIREMENTS

#### Article 622-1

Persons mentioned in Article 622-2 shall refrain from using inside information they possess by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

Such persons shall also refrain from :

1° disclosing such information to another person otherwise than in the normal course of his employment, profession or duties, or for a purpose other than that for which the information was disclosed to them ;

2° advising another person to buy or sell, or to have bought or sold by another person, on the basis of inside information, the financial instruments to which such information pertains or related financial instruments.

The abstention requirements set forth in this article do not apply to transactions effected in discharge of an obligation that has become due to acquire or sell financial instruments, where such obligation stems from an agreement entered into before the person concerned held inside information.

#### Article 622-2

The abstention requirements provided for in Article 622-1 apply to any person holding inside information by virtue of :

1° his membership of the administrative, management or supervisory bodies of the issuer ;

2° his holding in the issuer's capital ;

3° his access to such information through the exercise of his employment, profession or duties, as well as his participation in the preparation or execution of a corporate finance transaction ;

4° his activities that may be characterised as crimes or offences.

These abstention requirements apply also to any person who holds inside information and who knows, or should know, that is inside information.

Where the person referred to herein is a legal person, these abstention requirements shall also apply to natural persons taking part in the decision to effect the transaction on behalf of said legal person.

## TITLE III - MARKET MANIPULATION

### CHAPTER 1 - PRICE MANIPULATION

#### Section 1 - Abstention requirements

##### Article 631-1

All persons must refrain from manipulating prices.

Price manipulation consists of :

1° transactions or orders to trade that :

a) give or are likely to give false or misleading signals as to the supply of, demand for, or price of financial instruments, or ;

b) secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level,

unless the person who entered into the transactions or issued the orders establishes that the reason for effecting such transactions or issuing such orders are legitimate and conform to accepted market practices on the regulated market concerned ;

2° transactions or orders to trade that employ fictitious devices, or any other form of deception or contrivance ;

The following, in particular, shall constitute price manipulations :

a) conduct by a person, or persons acting in collaboration, to secure a dominant position in the market for a financial instrument, which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions,

b) the issuing, when the market opens or closes or, if such is the case, when a periodic auction is held, of orders to buy or sell financial instruments with the intention of hindering price formation on such market or of misleading investors acting on the basis of the prices concerned.

##### Article 631-2

The AMF considers the following factors, which shall not constitute an exhaustive list or be deemed in themselves to constitute price manipulation, when assessing the practices referred to in the point 1° of Article 631-1 :

1° the proportionate share of daily trading volume represented by orders given or transactions undertaken in the financial instrument concerned, especially where such trading results in a significant change in the price of this instrument or the underlying instrument ;

2° the extent to which orders issued or trades undertaken by persons with significant short or long positions in a financial instrument lead to a significant change in the price of this instrument or corresponding underlying instrument or derivative admitted to trading on a regulated market ;

3° transactions that do not result in a change of beneficial ownership of a financial instrument admitted to trading on a regulated market ;

4° position reversals in a short period resulting from orders given or trades undertaken on the regulated market in the financial instrument concerned, together with any significant changes in prices of a financial instrument admitted to trading on a regulated market ;

5° the extent to which orders given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change that is subsequently reversed ;

6° the impact of orders given on the best bid or offer prices in the financial instrument, or more generally on the representation of the order book available to market participants, that are removed before they are executed ;

7° price changes resulting from orders given or transactions undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated.

#### **Article 631-3**

The AMF considers the following factors, which shall not constitute an exhaustive list or be deemed in themselves to constitute price manipulation, when assessing the practices referred to in point 2° of Article 631-1 :

1° whether orders given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them ;

2° whether orders are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or investment recommendations that are erroneous or biased or demonstrably influenced by material interest.

#### **Article 631-4**

Any person that has transmitted orders to the market must be able to explain publicly, if the AMF so requests during an investigation or inspection, the reasons for and characteristics of such transmission.

## **Section 2 - Exemptions**

### **SUB-SECTION 1 - TRADING BY ISSUERS IN THEIR OWN SECURITIES**

#### **Article 631-5**

Section 1 of this chapter does not apply to transactions undertaken by an issuer in its own securities in connection with buy-back programmes, provided that such transactions :

1° comply with European Commission Regulation 2273/2003 of 22 December 2003 ;

2° conform to an accepted market practice and comply with the conditions set forth in the aforementioned Regulation 2273/2003, except for those provisions to be disapplied because of the decision to accept such practice, referred in Article 612-4.

The securities acquired under point 1° shall be allocated immediately on the basis of their objective and may not be reallocated to objectives other than those provided for in the aforementioned Regulation.

#### **Article 631-6**

Pursuant to Article 6 of European Commission Regulation 2273/2003 of 22 December 2003, an issuer shall refrain from trading in its own securities :

1° during the period between the date at which the company is cognisant of inside information and the date at which such information is made public ;

2° during the fifteen-day period prior to the dates of publication of its annual consolidated financial statements or, failing this, its annual individual financial statements, as well as its interim financial statements (half-yearly and quarterly if any).

These provisions can be disapplied if an accepted market practice is implemented, provided this is permissible in light of the decision to accept that practice, referred to in Article 612-4.

### **SUB-SECTION 2 - STABILISATION OF A FINANCIAL INSTRUMENT**

#### **Article 631-7**

Section 1 of this chapter does not apply to transactions undertaken by investment service providers for the purpose of stabilising a financial instrument, as defined in indent 7 of Article 2.7 of European Commission Regulation 2273/2003 of 22 December 2003, on condition that such transactions comply with the provisions of the aforementioned Regulation.

**Article 631-8**

*(Abrogated by the Decree of 18 april 2007)*

**Article 631-9**

The issuer or offeror, as the case may be, or the entity undertaking the stabilisation, whether or not it is acting on behalf of these persons, shall provide the AMF with details of all stabilisation transactions, as provided for in an AMF instruction, no later than the seventh trading day after the execution date.

**Article 631-10**

The information referred to in Article 9.3 of European Commission Regulation 2273/2003 of 22 December 2003 concerning the existence of and arrangements for stabilisation must be made public within one week of the end of the stabilisation period, through a news release that will be posted on the AMF website and on the website, if any, of the issuer.

The exercise of the greenshoe option referred to in Article 11 of the aforementioned Regulation 2273/2003 must be made public under the same conditions as in the first paragraph.

**CHAPTER 2 - BREACHES IN RELATION TO THE DISSEMINATION OF INFORMATION****Single section - Dissemination of false information****Article 632-1**

All persons must refrain from disclosing or knowingly disseminating information, regardless of the medium, that gives or may give false, imprecise or misleading signals as to publicly issued financial instruments, within the meaning of Article L. 411-1 of the Financial and Monetary Code, including the spreading of rumours and false or misleading information, where the persons making the dissemination knew or ought to have known that the information was false or misleading.

In particular, dissemination of false information shall include voicing, by whatever medium, an opinion about a financial instrument, or indirectly about its issuer, while having previously taken positions in this financial instrument and profiting subsequently from the resulting situation without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

Non-compliance with the prohibition referred to in the first paragraph by journalists acting in a professional capacity is to be assessed taking into account the rules governing their profession. However, such non-compliance may in itself constitute a breach if the interested parties derive, directly or indirectly, an advantage or profits from the dissemination of such information.



# GENERAL REGULATION OF THE AMF

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