

**AMF Instruction 2008-03**  
**Authorisation procedure for investment management companies, disclosure obligations**  
**and passporting**

References: Articles 311-1 to 311-3, 311-7, 311-7-1, 313-53-1, 316-3 to 316-5, 316-10 and 318-1 of the AMF General Regulation

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**Annex 1 – Standard authorisation application package**

**Annex 2 – Statement by capital providers and standard letter to the Chairman of the AMF**

**Annex 3 – Disclosure sheet to be provided by directors of investment management companies and standard letter to the Chairman of the AMF**

**Annex 4 – Forms giving notification of changes to investment management company details**

**Annex 5 – Major shareholding disclosure form**

**Annex 6 – Notification forms for carrying on a business activity under the freedom to provide services or the freedom of establishment in another State party to the European Economic Area agreement**

Pursuant to Articles L. 532-1 and L. 532-9 of the Monetary and Financial Code, any company wishing to provide, as its primary business, the service mentioned in 4 of Article L. 321-1 of the Monetary and Financial Code (portfolio management for third parties) or manage one or more UCITS, AIFs, foreign UCITS approved in accordance with Directive 2009/65/EC (“UCITS IV”), foreign AIFs subject to Directive 2011/61/EU (“AIFM”) or other collective investments as defined by Article L. 214-191 of the Monetary and Financial Code<sup>1</sup> must first be authorised by the AMF as an investment management company.

This instruction applies to all investment management companies, i.e.:

<sup>1</sup> If these other collective investments take the shape of a SICAV or SPICAV with a sole shareholder or partner as defined by 1° or 2° of Article L. 214-191 of the Monetary and Financial Code.

- investment management companies that manage one or more UCITS approved in accordance with Directive 2009/65/EC (under French or foreign law);
- investment management companies that manage one or more AIFs governed by Directive 2011/61/EU (under French or foreign law), whether or not they are fully subject to the AIFM Directive. **Where there are specific aspects for authorisation under the AIFM Directive, these are expressly identified in this instruction;**
- investment management companies that provide investment services;
- investment management companies that manage one or more other collective investments as defined by 1° and 2° of I of Article L. 214-191 of the Monetary and Financial Code.

This instruction does not apply to the legal entities mentioned in Article 311-1 B of the AMF General Regulation, i.e. legal entities that manage other AIFs whose total asset value, calculated in accordance with Article 2 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012, is below the limits set in Article R. 532-12-1 of the Monetary and Financial Code, that have only professional unitholders or shareholders and that do not wish to be subject to the regime for investment management companies. These legal entities must register with the AMF according to the procedures set out in Instruction 2013-21. Investment management companies and other legal entities wishing to use the name “EuVECA” or “EuSEF” must see the relevant AMF instruction.

This instruction also covers:

- passporting for foreign management companies wishing to provide investment services or manage one or more UCITS or AIFs in France;
- passporting for French investment management companies wishing to provide investment services<sup>2</sup> or manage one or more UCITS<sup>3</sup> or AIFs<sup>4</sup> outside France.

Unless otherwise specified, the term “AIF” refers in this instruction to AIFs listed in II of Article L. 214-24 of the Monetary and Financial Code, “Other AIFs” as defined by III of the same article and AIFs established in another Member State of the European Union (EU) or in a third country.

### **Introductory remarks – Applicable authorisations and directives**

The following is recalled:

**To provide the service of portfolio management for third parties as a primary business**, it is necessary to be authorised as an investment management company. Except if the investment management company also applies for authorisation under Directive 2009/65/EC and/or Directive 2011/61/EU, the authorisation issued by the AMF for the service of portfolio management (and, where applicable, for the services of investment advice and reception/transmission of orders for third parties) will be subject to Directive 2004/39/EC (“MiFID”).

When providing the service of portfolio management for third parties or other investment services, the investment management company must comply with the provisions of Title I of Book III of the AMF General Regulation.

**To manage one or more UCITS** approved in accordance with Directive 2009/65/EC (“UCITS Directive”), it is necessary to be authorised as an investment management company under the same directive.

When managing UCITS, the investment management company must comply with the provisions of Title I of Book III of the AMF General Regulation.

**To manage one or more AIFs**, it is necessary to be authorised as an investment management company, except in the cases listed by law (see Articles L. 214-24 and L. 532-9 of the Monetary and Financial Code,

<sup>2</sup> In another EU Member State or in a State party to the European Economic Area Agreement.

<sup>3</sup> In another EU Member State or in a State party to the European Economic Area Agreement.

<sup>4</sup> In another EU Member State.

and Article 33 of Executive Order 2013-676 of 25 July 2013 amending the legal framework for asset management).

In addition, authorisation under Directive 2011/61/EU (“AIFM Directive”) is required if the total value of the assets of AIFs under management, calculated in accordance with Article 2 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012, exceeds the limits set by Article R. 532-12-1 of the Monetary and Financial Code, i.e. when:

- the assets of AIFs under management, including assets acquired through leverage, exceed EUR 100 million in total, or
- the assets of AIFs under management exceed EUR 500 million in total if leverage is not used and if funds cannot redeem units or shares for a period of five years from the date of the initial investment in each AIF.

If the assets of AIFs under management are below these limits, the investment management company may:

- manage the AIFs without an authorisation under the AIFM Directive, or
- take the option of requesting an authorisation under the AIFM Directive.

When managing AIFs with an authorisation under the AIFM Directive, the investment management company must comply with the provisions of Title I bis of Book III of the AMF General Regulation. In this case, pursuant to I of Article L. 532-9 of the Monetary and Financial Code, it may not manage one or more other collective investments.

However, if the investment management company manages one or more AIFs whose asset value is below the abovementioned limits and if the company has not opted for full application of the AIFM Directive, the company shall comply with the provisions of Title I of Book III of the AMF General Regulation.

## **Title I – Initial authorisation of investment management companies and approval of programme of activity<sup>5</sup>**

### **Chapter I – Authorisation procedure**

#### **Article 1 - Filing an application for initial authorisation**

Before an investment management company may be authorised, an application specifying the scope of the authorisation must be filed with the AMF, along with an application package that complies with the standard package referred to in Article R. 532-10 of the Monetary and Financial Code and detailed in Annex 1-1 of this instruction. An original hardcopy and an electronic version of the standard application package shall be provided to the AMF. All sections must be completed, as must all appended annexes.

The application package includes a programme of activity for each of the services that the applicant company intends to provide, detailing the conditions under which the company plans to provide the services and indicating the type of transactions proposed and the structure of the company’s organisation<sup>6</sup>. When the application package for initial authorisation is submitted, an application to approve the supplementary forms relating to the instruments used is also filed with the AMF (Annexes 1.2 to 1.9 of this instruction).

#### **Additional requirements concerning authorisation under the AIFM Directive**

The application package contains the information mentioned in Article 316-3 of the AMF General Regulation. The applicant shall provide, in addition to the standard application package shown in Annex 1-1 of this instruction, the detailed information requested in Annex 1-1 bis.

<sup>5</sup> The term “programme of activity” covers the programme of activity and the supplementary forms relating to instruments.

<sup>6</sup> Article 311-1 of the AMF General Regulation or, for investment management companies authorised in accordance with the AIFM Directive, Article 316-3.

The application for initial authorisation is signed by an authorised person of the applicant company. This person should be either a legal representative or a specially authorised person.

Once the application package has been filed, the AMF may, at any time during the authorisation procedure, ask to see evidence of the authorisations given to this person.

## **Article 2 - Registration and review of the application by the AMF**

On receipt of the application for initial authorisation, the AMF verifies that the documents comply with the templates appended to this instruction and the standard supplementary form(s) provided in the annexes to this instruction (Annexes 1.2 to 1.9) and ensures that all the documents mentioned in the standard application package are included. The AMF issues a receipt showing that the application package has been officially filed. The receipt indicates when the authorisation waiting time expires, namely three months from receipt of the complete package.

### **Specific provisions concerning authorisation under the AIFM Directive**

In accordance with the 5<sup>th</sup> sub-paragraph of Article 316-4 of the AMF General Regulation, the application package is deemed to be complete if it contains at least the information mentioned in 1° to 4° and 6° of Article 316-3. The information mentioned in 5° and 7° to 9° of the same article must be presented no later than one month before starting up the business of AIF management.

In accordance with Article R. 532-12 of the Monetary and Financial Code, the AMF “may extend this period for up to three additional months, where it deems necessary because of the specific circumstances of the case and after notifying the manager of this”.

If the application is non-compliant or incomplete, the AMF may return the application to the sender with an explanation of why it was sent back.

When reviewing the application package, the AMF may request additional information to conduct the review. The AMF shall indicate the requested information by electronic means, post or fax.

The applicant company may send this information electronically, by post or by fax giving the application package’s references.

## **Article 3 - Consultation by the AMF of the competent authorities of a State party to the European Economic Area (EEA) Agreement**

In accordance with the provisions of Article R. 532-15 of the Monetary and Financial Code, the AMF requires the opinion of the competent authorities of another State party to the EEA Agreement if the applicant company is:

- 1° The subsidiary of an insurance company, reinsurance company, credit institution, investment management company or another investment firm approved in a Member State of the EU or another State party to the EEA Agreement or approved in a financial sector other than that of the planned acquisition;
- 2° The subsidiary of the parent company of an insurance company, reinsurance company, credit institution, investment management company or another investment firm approved in a Member State of the EU or another State party to the EEA Agreement or approved in a financial sector other than that of the planned acquisition;
- 3° A company controlled by a natural person or legal entity that also controls an insurance company, reinsurance company, credit institution, investment management company or another investment firm approved in a Member State of the EU or another State party to the EEA Agreement or approved in a financial sector other than that of the planned acquisition. The AMF shall consult the competent authority, as defined by 4° of I of Article L. 517-2 of the Monetary and Financial Code, particularly to assess the suitability of shareholders and the reputation and experience of directors involved in the management of another entity of the same group.

**Article 4 - Notification of authorisation decision and approval of accompanying supplementary form(s).**

The letter from the AMF informing the investment management company that authorisation has been granted includes:

- 1° The authorisation number;
- 2° The date on which the authorisation was issued;
- 3° The scope of the authorisation, which is based on the scope of the programme of activity (supplementary form(s) provided in the application package) submitted to the AMF.

Pursuant to Article L. 532-9 of the Monetary and Financial Code, “the AMF may attach specific requirements to the authorisation aimed at maintaining the balance of the management company’s financial structure. It may also make issuance of the authorisation conditional on compliance with undertakings given by the applicant company or its shareholders”.

Pursuant to the article cited above, the authorisation may be made conditional on the effective establishment of the company and/or the transmission to the AMF of evidence that the conditions precedent have been met within the time given by the authorisation decision. If such conditions are not met, the authorisation shall lapse. Acceptable evidence shall include final articles of association, certification of the deposit or transfer of funds making up the company’s capital, a K-bis certificate of incorporation indicating that the company has been effectively established, a countersigned letter of employment demonstrating the effective recruitment of an employee or the transmission of a signed final service delivery agreement.

Once authorisation becomes effective, the company must insert a reference to its status as an investment management company, along with its authorisation number, in publicly-available documents and, where applicable, on the company’s website. However, this information may not be presented for advertising purposes as indicating a seal of quality or an investment performance guarantee.

If the AMF refuses to authorise the investment management company and/or to approve the supplementary form(s) presented for its approval, a letter explaining the reasons for this refusal will be sent to the applicant company.

**Additional requirements concerning authorisation under the AIFM Directive**

In accordance with Article 316-4 of the AMF General Regulation, “the applicant may begin carrying on its business in AIF management on receiving its authorisation, but no earlier than one month after submitting any missing information mentioned in 5° and 7° to 9° of Article 316-3”.

**Article 5 - Process of issuing authorisation and approving a supplementary form**

Stage	Applicant company	AMF
1	Files application for authorisation.	
2		Receives the application. Makes sure that the application package is compliant. Sends acknowledgement of receipt certifying that the application package has been filed with the AMF, provided it is complete, or sends the package back, explaining the reasons for this.
3		Reviews the application, contacting the applicant if necessary and requesting additional information.
4		Where applicable, sends a letter extending the waiting period.
5		Informs the company that authorisation has been granted (with or without conditions precedent) or refused.
6	Where applicable, sends supporting documents required to lift conditions precedent within the timeframe stipulated in the notification letter.	
7		Receives supporting documents. Notifies the company that conditions precedent have been lifted and that the authorisation has come into effect.
8	For authorisation under the AIFM Directive: Where applicable, sends missing information mentioned in 5° and 7° to 9° of Article 316-3 of the AMF General Regulation at least one month before starting up business.	
9	Investment management company begins doing business.	

**Chapter II – Programme of activity**

**Article 6 – General**

The application package must contain a programme of activity for each of the services that the investment management company intends to provide, detailing the conditions under which the company plans to provide the services and indicating the type of transactions proposed and the structure of the company's organisation<sup>7</sup>.

The content of the programme of activity is specific to each investment management company. The forms and questionnaires in Annex 1-1 of this instruction are designed to guide companies as they describe their operations. Some of the information requested and mentioned in the annex may not be applicable to the type of business planned by the company (for example, the rules on calculating certain regulatory ratios for UCITS are not relevant to companies operating solely in the area of private equity). The detailed nature of the required information should not be interpreted as indicating a minimum standard that companies must reach. Thus, the fact that companies are asked to describe certain procedures (whether they have an investment committee, for example) or to supply certain information (such as the list of software used) should not be interpreted as implying that the company must implement the corresponding procedure or have the requested information. However, to facilitate the review process, it is vital to indicate that the procedure or information in question is not applicable.

The programme of activity describes all the services and activities that the management company intends to provide as part of its business activities, together with the associated controls. The programme should be tailored to reflect the portfolios managed, which may include investment mandates, UCITS, general-purpose investment funds, company investment funds (FCPEs) in listed or unlisted securities, venture capital funds (FCPRs), professional private equity funds, local investment funds (FIPs), innovation funds (FCPIs), general-purpose professional funds, alternative funds of funds, specialised professional funds and other AIFs. The programme should also be adapted to reflect the financial instruments used by the company as part of its investment strategy, such as investment fund units, instruments traded or not on a regularly operating regulated market, or complex over-the-counter forward instruments, including credit derivatives. This requirement flows from the obligation set out in I of Article 313-54 of the AMF General Regulation whereby companies must have adequate resources that are commensurate with their business activities<sup>8</sup>.

Accordingly, the supplementary forms mentioned in Article 7 below require special AMF approval. The AMF may review these forms when it examines the application for initial authorisation or at a later stage following initial authorisation of the investment management company, if the firm submits a request to extend the scope of its operations. Article 11 of this instruction describes the procedure to follow in such cases.

#### **Article 7 – Specific instruments used by the investment management company**

The programme of activity (see Annex 1-1 of this instruction for a template) shall be complemented, as applicable, by supplementary forms covering the use of:

- 1° instruments traded on a regulated or organised market;
- 2° European UCITS and AIFs available to retail customers;
- 3° European AIFs intended for professional customers and third-country AIFs;
- 4° financial instruments not admitted to trading on a regulated or organised market;
- 5° real estate assets, defined in Article L.214-36 of the Monetary and Financial Code;
- 6° loans;
- 7° non-complex futures (financial contracts);
- 8° complex futures (financial contracts).

Templates for the supplementary forms are provided in Annexes 1.2 to 1.9 of this instruction.

<sup>7</sup> Article 311-1 of the AMF General Regulation, or, for investment management companies authorised in accordance with the AIFM Directive, Article 316-3.

<sup>8</sup> For authorisation under the AIFM Directive, this requirement flows from the obligation to have adequate and appropriate human and technical resources to properly manage AIFs, mentioned in Article 318-1 of the AMF General Regulation.



## **Title II – Changing details provided in the application for initial authorisation**

### **Article 8 – Procedure**

Pursuant to the provisions of Article L. 532-9-1 of the Monetary and Financial Code, “Changes in the distribution of an investment management company’s capital must be notified to the AMF.

Direct or indirect acquisitions of, or increases in, equity interests in an investment management company must be authorised by the AMF.

Where a reduction in, or sale of, a direct or indirect holding is reported to it, the AMF shall check to ensure that said transaction does not affect the terms under which firm’s authorisation was granted.

[...].

II. – An investment management company wishing to make any other changes to the terms under which its authorisation was granted must obtain prior approval from the AMF, file a report or provide notification, depending on the nature of the change”.

The following table sets out the reporting obligations of investment management companies according to the type of change, indicating the applicable regime.

In accordance with Articles 311-3 and 316-5 of the AMF General Regulation, if the modification requires prior approval from the AMF, then the AMF has one month to inform the firm that the application has been rejected or is subject to restrictions. The AMF may, if the specific circumstances warrant, notify the investment management company that this period has been extended by up to one month. The changes are implemented following a one-month assessment period, which may be extended.

In the event of a change in the distribution of the investment management company’s capital, the AMF shall send its decision in writing to the investment management company and the prospective buyers and sellers within 60 business days of acknowledging receipt of the application, in accordance with the conditions mentioned in Article 312-13 and Article 317-12 of the AMF General Regulation.

In the case of a major change to the organisation or business of the investment management company not covered by the table below, the company must first contact the AMF to determine the best way to proceed.

<b>Planned change</b>	<b>Changes subject to prior approval from the AMF</b>	<b>Changes to be reported immediately to the AMF</b>	<b>Changes to be reported annually<sup>9</sup> or at the request of the AMF</b>	<b>Complete the following annexes in duplicate together with the change of details form and requested supporting documents</b>
<b>SCOPE OF ACTIVITY</b>				
Change to the programme of activity resulting from overall reorganisation or restructuring of the company	X			This change is addressed by an exchange of correspondence between the AMF and the investment management company
Update to the core	X			Form A1

<sup>9</sup> Annual disclosure: means on the anniversary of the investment management company’s authorisation.

programme of activity or supplementary form without an authorisation extension (including partial mergers)				
Request from the management company to withdraw authorisation		X		Form A2
<b>IDENTIFICATION DETAILS</b>				
Change in corporate name and contact details		X		Form B1
Change to articles of association			X	Form B2
<b>OWNERSHIP STRUCTURE</b>				
Change in direct or indirect shareholders	X if subject to notification as defined by Article 312-11 or 317-10 of the AMF General Regulation	X <sup>10</sup>	X in other cases	Form C1
Change in the company's share capital		X		Form C2
Addition of additional own funds or ancillary own funds capital		X		Form C3
Equity interests/subsidiaries of the investment management company			X	Form C4
<b>MANAGEMENT</b>				
Change of director		X		Form D1
<b>OUTSOURCING AND DELEGATION OF FINANCIAL MANAGEMENT</b>				
Outsourcing of tasks or operational functions relating to the provision of the service of portfolio management for third parties (excluding outsourcing of portfolio management for third parties) or the exercise of other activities or delegation of administrative or accounting management of collective investments under French or foreign law		X		Form E1
Delegation of financial management <sup>11</sup> of		X		Form E2

<sup>10</sup> The AMF shall be notified immediately only of transactions between companies that are directly or indirectly owned and controlled by the same company, unless such transactions result in the transfer of control or ownership of some or all of the abovementioned rights to persons that are not subject to the laws of a State party to the EEA agreement.

collective investments under French or foreign law or outsourcing of the service of portfolio management for third parties (change to the terms governing the delegation of financial management described in the company's programme of activity)				
<b>MANAGEMENT TEAM</b>				
Change of financial managers or investment managers		X		Form F1
Change in HR organisation			X	Form F2
<b>ORGANISATION OF CONTROL, COMPLIANCE AND RISK MANAGEMENT</b>				
Change of compliance and internal control officer	X (if outsourcing)	X		Form G1
Change of risk controller		X		Form G2
Change of TRACFIN correspondent/reporting officer			X	Form G3

## Section I – Changes subject to prior approval

### Article 9 - Filing and processing a request for prior approval

I. - Investment management companies concerned by the changes listed in the table in Article 8 and requiring prior approval from the AMF should send a request to the AMF in accordance with the following procedures.

This request should include:

1° Two original copies of the form summarising the changes to management company details (Annex 4-1 of this instruction), indicating contact details for the investment management company and the forms concerned by the change, as well as two original copies of the change to management company details form(s) in Annex 4-2 and following of this instruction. Every section should be completed and the reason for the change must be clearly stated;

2° The supporting documents referred to in the same annex. The investment management company may also supply any other document that it deems necessary.

An authorised representative of the investment management company should sign the request. He or she may be a legal representative or a specially authorised person.

The AMF is entitled to request additional information. The investment management company may submit such information electronically, by post or by fax, quoting the file reference.

II. - After verifying the information provided to it, the AMF informs the investment management company of its decision regarding the planned changes, as follows:

1° If the AMF accepts the changes, it returns to the investment management company one of the two copies of the change to details documentation; this should comprise at least the form summarising the changes and the relevant forms, which should be signed;

<sup>11</sup> Including delegation of risk management as defined by Article 318-58 of the AMF General Regulation for investment management companies authorised under the AIFM Directive regarding their AIF management business.

2° If the AMF does not accept the changes, it sends a letter indicating the reasons for this.

### **Article 9-1 – Specific case of filing and processing a notification concerning a change in the distribution of capital**

I. - Pursuant to Article 312-11 or, in the case of authorisation under the AIFM Directive, Article 317-10 of the AMF General Regulation, “The AMF shall be notified of any transaction that enables a person acting alone or in concert with other persons, within the meaning of Article L. 233-10 of the Commercial Code, to acquire, increase or decrease or sell a directly or indirectly held equity interest, within the meaning of the provisions of Article L. 233-4 of the said code, in an investment management company. The notice must be given to the AMF by the person or persons concerned before the transaction is executed, if one of the two following requirements is met:

1° Voting rights held by the person(s) increase or decrease above or below one-tenth, one-fifth, one-third or one-half of the voting rights;

2° The investment management company becomes or stops being a subsidiary of the person(s) concerned”.

In all cases, notification of a transaction to acquire, increase or decrease or sell an equity interest must include:

1° Two original copies of the form summarising the changes to management company details (Annex 4-1 of this instruction), indicating contact details for the investment management company and the form concerned by the change, as well as two original copies of Form C1 in Annex 4-5 of this instruction. Every section should be completed and the reason for the change must be clearly stated;

2° The supporting documents referred to in the same annex. The investment management company may also supply any other document that it deems necessary.

An authorised representative of the investment management company should sign the notification. He or she may be a legal representative or a specially authorised person.

The AMF is entitled to request additional information in accordance with Article 312-13 or, in the case of authorisation under the AIFM Directive, with Article 317-12 of the AMF General Regulation. The investment management company and the prospective buyer may submit such information electronically, by post or by fax, quoting the file reference.

II. – In the case of transactions designed to decrease or sell an equity interest, after verifying the information provided to it, the AMF informs the investment management company and prospective seller of its decision regarding the application as follows:

1° If the sale does not affect the terms under which the firm’s authorisation was granted, the AMF sends the investment management company a signed copy of Form C1 (Annex 4-5 of this instruction) and sends the prospective seller a letter notifying it of its decision;

2° If the sale does affect the terms under which firm’s authorisation was granted, the AMF informs the investment management company and prospective seller of this, indicating the reasons why it intends to reject the application to modify the authorisation in accordance with Article 311-3 or, in the case of authorisation under the AIFM Directive, with Article 316-5 of the AMF General Regulation. The investment management company and the prospective seller have one month from receipt of this notification to submit any observations that they may have.

III. - In the case of transactions designed to acquire or increase an equity interest and requiring prior approval, after verifying the information provided to it, the AMF informs the investment management company and prospective buyer of its decision regarding the application as follows:

1° If the AMF accepts the application, it sends the investment management company one of the two copies of Form C1, signed (Annex 4-5 of this instruction); it sends the prospective buyer the signed statement by capital providers; and it sends the seller (where applicable) notification of the AMF’s decision;

2° If the AMF does not accept the changes, it sends a letter indicating the reasons for this.

IV. - Furthermore, in accordance with Article 312-13 or, in the case of authorisation under the AIFM Directive, with Article 317-12 of the AMF General Regulation “the AMF shall be notified immediately only of transactions between companies that are directly or indirectly owned and controlled by the same company, unless such transactions result in the transfer of control or ownership of some or all of the abovementioned rights to persons that are not subject to the laws of a State party to the EEA agreement”.

## **Section II – Changes to be reported immediately, annually<sup>12</sup> or at the request of the AMF**

### **Article 10 - Procedures governing the exchange of information between the investment management company and the AMF**

Investment management companies concerned by changes that are listed in the table in Article 8 and that must be reported to the AMF should make a disclosure to the AMF in accordance with the following procedures.

This disclosure should include:

1° Two original copies of the form summarising the changes to management company details (Annex 4-1 of this instruction), indicating contact details for the investment management company and the forms concerned by the change, as well as two original copies of the change to management company details form(s) in Annex 4-2 and following of this instruction. Every section should be completed and the reason for the change must be clearly stated;

2° The supporting documents referred to in the same annex. The investment management company may also supply any other document that it deems necessary.

An authorised representative of the investment management company should sign the notification. He or she may be a legal representative or a specially authorised person. The AMF is entitled to request additional information. The investment management company may submit such information electronically, by post or by fax, quoting the file reference.

Once the AMF has verified the information provided to it, if the form indicates that the AMF should inform the investment management company of its decision regarding the reported changes, the AMF will proceed as follows:

1° If the AMF has no comments to make regarding the reported changes, the AMF indicates its acceptance by returning to the investment management company one of the two copies of the change to details documentation; this should comprise at least the summary form and the other relevant form(s), which should be signed;

2° If the change affects the scope of the company's authorisation, the AMF notifies the investment management company of this in a letter indicating the reasons for this decision and the consequences, if any, for the investment management company's authorisation.

### **Article 10-1 – Cases where financial management is delegated**

In a case where UCITS or AIF management is delegated (modification to the terms of delegation of financial management described in the management company's programme of activity), two situations may arise:

- the delegation:
  - is limited to a short, precisely-defined list of UCITS or AIFs and is not intended to be used in the future with other UCITS or AIFs;
  - relates to strategies close to those habitually employed by the management company, meaning a marginal change to its organisation and control arrangements.

In this case, it is usually appropriate to submit Annex 4-11 (Form E2) of this instruction, which informs the AMF of the names of the affected UCITS or AIFs.

<sup>12</sup> Annual disclosure: means on the anniversary of the investment management company's authorisation.

- in all other cases, the programme of activity must be updated (in addition to submitting Annex 4-11 as mentioned above). This update must make it possible to identify the scope of the planned delegations and assess the appropriateness of the control arrangements put in place.

Once this update has been accepted by the AMF, and to simplify administrative dealings with the regulator, the investment management company need merely provide notification to the AMF to establish additional delegations, provided they comply with the framework defined by the programme of activity.

#### **Article 10-2 – Specific requirements relating to delegations for investment management companies authorised under the AIFM Directive**

In accordance with Article 76 of Commission Delegated Regulation No. 231/2013 of 19 December 2012, the investment management company must provide the AMF with objective reasons for the delegation (not limited to financial management only) that should be described, explained and justified in detail. To determine whether the entire delegation structure is based on objective reasons, the AMF will take account of the criteria mentioned in Article 76 of the regulation.

The AMF may ask the investment management company to provide additional explanations and documents proving that the entire delegation structure is based on objective reasons.

#### **Title III – Extending an authorisation**

This title applies if the investment management company requests an extension to its authorisation, and in particular:

- if it wants to provide a new investment service or market funds that it does not manage,
- if it plans to select new instruments (new supplementary form that was not presented with the application for initial authorisation),
- if it wants to be authorised under the AIFM or UCITS Directives, if this was not the case in the initial authorisation,
- if it wants to change a restriction in the initial authorisation (e.g. restricted to professional customers or equivalent).

#### **Article 11 - Process of extending an authorisation**

Stage	Investment management company	AMF
1	Files application to extend authorisation (application submitted in hardcopy and electronic form).	
2		Receives the application. Makes sure that the application package is compliant with the template for the appropriate supplementary form on the AMF website. Sends acknowledgement of receipt certifying that the application package has been filed with the AMF, or sends the package back, explaining the reasons for this.
3		Reviews the application, contacting the applicant if necessary.

4		Where applicable, extends the authorisation waiting period.
5		Notifies the company of the authorisation decision (without prejudice to conditions precedent).

#### **Article 12 – Filing an application to extend an authorisation**

Before the authorisation of an investment management company may be extended, the firm must first file with the AMF, as applicable, the appropriate supplementary form(s) in Annexes 1.2 to 1.9 of this instruction or the application package in Annex 1. If the investment management company wants to apply for authorisation under the AIFM Directive, it must send the requisite information, particularly the details mentioned in Annex 1-1-bis of this instruction.

The original hardcopy version of the application is sent to the AMF, as well as an electronic version.

An authorised representative of the investment management company should sign the application for an extension to the authorisation. He or she may be a legal representative or a specially authorised person.

The AMF may at any time during the process of approving the extension to an authorisation, ask to see evidence of the authorisations given to the person who filed the application.

#### **Article 13 - Registration and review of the application by the AMF**

On receipt of the application to extend the authorisation, the AMF verifies, as applicable, that the document complies with the corresponding supplementary form or with the standard application package provided on its website and that it contains all the elements required to conduct a review. The AMF issues a receipt showing that the application has been officially filed with the AMF. The receipt gives the expiry date for the waiting time to approve the extension, which is three months from receipt of the complete package.

In accordance with Article R. 532-12 of the Monetary and Financial Code, the AMF “may extend this period for up to three additional months, where it deems necessary because of the specific circumstances of the case and after notifying the manager of this”.

If the application is non-compliant or incomplete, the AMF may return the application to the sender, giving the reasons why it was sent back.

When reviewing an application, the AMF is entitled to request additional information.

In the event that additional information is requested, the AMF shall provide notification of this electronically, by post or by fax, specifying the requested information.

The investment management company may submit such information electronically, by post or by fax, quoting the file reference.

#### **Specific provisions concerning authorisation under the AIFM Directive**

In accordance with Article 316-3 of the AMF General Regulation, if the investment management company is already authorised under Directive 2009/65/EC (UCITS 4), it is not required to resubmit to the AMF the information or documents that it previously provided with its application for authorisation under that directive, provided such information or documents are up to date.

### **Specific provisions concerning authorisation under the UCITS Directive**

If the investment management company is already authorised under Directive 2011/61/EU (AIFM), it is not required to resubmit to the AMF the information or documents that it previously provided with its application for authorisation under that directive, provided such information or documents are up to date.

#### **Article 14 - Notification of decision regarding the authorisation extension**

The AMF notifies the investment management company of the extension to its authorisation, which remains restricted to the scope presented in the application filed with the AMF. Furthermore, extension may be subject to the performance of conditions precedent.

If the AMF refuses to extend an authorisation, a letter explaining the reasons for this will be sent to the applicant.

### **Title IV – Other disclosure obligations with respect to the AMF**

#### **Article 15 – Financial statements of the investment management company**

In accordance with Article 313-59 of the AMF General Regulation<sup>13</sup>, within six months of the end of the financial year, the investment management company must send the AMF copies of its balance sheet, profit and loss statement and the notes to the financial statements, along with the annual management report and notes, and the general and special reports of the statutory auditor. These documents should be emailed to [gio@amf-france.org](mailto:gio@amf-france.org).

The management report should indicate the amount of assets under management and the number of discretionary accounts, the main changes in the scope of the company's business together with an analysis of the company's earnings and of the factors underpinning this performance.

#### **Article 16 - Annual statistics and internal control report**

Pursuant to Article 313-53-1 of the AMF General Regulation<sup>14</sup>, within four and a half months of the end of the financial year, the investment management company must send the AMF certain required information in a duly completed annual disclosure statement along with the annual control report prepared in accordance with the provisions of Article 313-7 of the General Regulation<sup>15</sup>. This information should be provided through a secure connection via the GECO extranet, in the area reserved for the investment management company.

In the event of problems, you may send an email to [gio@amf-france.org](mailto:gio@amf-france.org).

#### **Article 17 - Other information relating to collective investments managed by the company**

The investment management company must send the AMF, via GECO, net asset values and regulatory documents (where applicable key investor information document and/or prospectus) for each fund that it manages.

<sup>13</sup> Or Article 318-2 for investment management companies authorised under the AIFM Directive as regards their AIF management business.

<sup>14</sup> Or Article 318-37 for investment management companies authorised under the AIFM Directive as regards their AIF management business.

<sup>15</sup> Or paragraph 4 of Article 60 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012 for the persons mentioned in Article 316-2 of the AMF General Regulation as regards their AIF management business.



## Article 18 – Major shareholding and takeover disclosures applicable to AIF investment management companies

### Requirements concerning authorisation under the AIFM Directive

Investment management companies authorised under the AIFM Directive must make the disclosures provided for in Articles L. 214-24-21 to L. 214-24-23 and D. 214-32-6 to D. 214-32-8 of the Monetary and Financial Code if the AIFs that they manage breach thresholds for major shareholdings in unlisted companies<sup>16</sup> and/or take control<sup>17</sup> of unlisted companies or issuers<sup>18</sup>.

The disclosure must be made to the AMF through the GECO extranet within ten business days of the day on which the AIF reached, exceeded or went below the threshold, or took control of the company.

The application may be accessed online at <https://geco2.amf-france.org><sup>19</sup>.  
In the event of problems, you may send an email to [gio@amf-france.org](mailto:gio@amf-france.org).

### Article 18-1 – Investment management companies managing AIFs: occasional breach of the threshold

Pursuant to Article 4 of Commission Delegated Regulation (EU) No. 231/2013, if the investment management company manages AIFs without authorisation under the AIFM Directive (initially, the total value of assets managed by the investment management company, as calculated in accordance with Article 2 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012, was below the thresholds set in Article R. 532-12-1 of the Monetary and Financial Code and the company has not opted for full application of the AIFM Directive), if the assets of AIFs under management exceed the thresholds of €100 million or €500 million (Article R. 532-12-1 of the Monetary and Financial Code):

- if the investment management company considers that the situation is not of a temporary nature, it shall notify the AMF without delay, sending it the form given in Annex 5, and must request an authorisation under the AIFM Directive within 30 calendar days;
- if the investment management company considers that the situation is of a temporary nature, it shall notify the AMF without delay, sending it the form given in Annex 5 of this instruction.

## Title V – Provision of investment services or management of collective investments under the freedom to provide services and freedom of establishment in the European Economic Area

### Chapter I – Passport for domestic companies conducting business outside France

#### Article 19 – Freedom to provide services

##### Article 19-1 – Management of UCITS or provision of investment services under the freedom to provide services

Any French investment management company wishing to carry on UCITS management activities or provide investment services within the territory of another State party to the EEA agreement for the first time under the freedom to provide services must send the AMF written notification of its intention to

<sup>16</sup> As defined by 1° of Article L. 214-24-23 of the Monetary and Financial Code (company whose registered offices are in a Member State of the EU and whose shares are not admitted to trading on a regulated market of an EU Member State).

<sup>17</sup> Notion of control as defined in Article L. 214-24-23 of the Monetary and Financial Code.

<sup>18</sup> As defined by 2° of Article L. 214-24-23 of the Monetary and Financial Code.

<sup>19</sup> A signature (user name and password) is needed to log in. This information is sent to the official email address of each management company.

exercise the freedom to provide services (template provided in Annex 6 of this instruction, or Annex 6.1 for passports under Directive 2004/39/EC and Annex 6.2 for passports under Directive 2009/65/EC).

The investment management company shall subsequently inform the AMF and the competent authorities of the host State in writing of any planned changes before making such changes.

#### **Article 19-2 – Management of AIFs under the freedom to provide services**

Any French investment management company wishing to carry on AIF management activities within the territory of another Member State of the EU for the first time under the freedom to provide services must send the AMF written notification of its intention to exercise the freedom to provide services (template provided in Annex 6.3 of this instruction).

In accordance with the first sub-paragraph of III of Article R. 532-25-1 of the Monetary and Financial Code, if the investment management company is planning a change to the information included in the notification of intention to exercise the freedom to provide services, the company shall inform the AMF of this at least one month before the change is made or immediately after in the event of an unforeseen change.

#### **Article 20 – Establishment of branches**

##### **Article 20-1 – Establishment of branches to manage UCITS or provide investment services**

Any French investment management company wishing to establish a branch within the territory of another State party to the EEA agreement must send the AMF written notification of its intention to exercise the freedom of establishment (template provided in Annex 6 of this instruction).

The investment management company shall subsequently inform the AMF in writing of any planned changes at least one month before making such changes. The AMF will then inform the competent authorities of the host State.

The investment management company shall make available to the AMF all the information needed to assess whether the branch has the requisite administrative structures and financial position. Notably, this information should include forward-looking business data, general expenses and expected income for the branch, along with details of how the branch is to be supervised. Pursuant to Article 315-49 of the AMF General Regulation, the company must set up a system to combat money laundering and terrorist financing.

The AMF is entitled to conduct on-site inspections to verify the information on the business activities, management and structure of branches established by investment management companies in other EEA States. It may appoint a person to do this or it may ask the competent authorities of the host State to carry out the necessary inspections.

##### **Article 20-2 – Establishment of branches to manage AIFs**

Any French investment management company wishing to establish a branch within the territory of another Member State of the EU must send the AMF written notification of its intention to exercise the freedom of establishment (template provided in Annex 6 of this instruction).

In accordance with the first sub-paragraph of III of Article R. 532-25-1 of the Monetary and Financial Code, if the investment management company is planning a change to the information included in the notification of intention to exercise the freedom of establishment, the company shall inform the AMF of this at least one month before the change is made or immediately after in the event of an unforeseen change.

The investment management company shall make available to the AMF all the information needed to assess whether the branch has the requisite administrative structures and financial position. Notably, this

information should include forward-looking business data, general expenses and expected income for the branch, along with details of how the branch is to be supervised. Pursuant to Article 320-14 of the AMF General Regulation, the company must set up a system to combat money laundering and terrorist financing.

The AMF is entitled to conduct on-site inspections to verify the information on the business activities, management and structure of branches established by investment management companies in other EU States. It may appoint a person to do this or it may ask the competent authorities of the host State to carry out the necessary inspections.

## **Chapter II – Passport for non-French companies conducting business in France**

### **Article 21 - Freedom to provide services in France for management companies**

#### **Article 21-1 – Management of UCITS or provision of investment services in France under the freedom to provide services**

Before an investment management company may carry on its business in France under the freedom to provide services, the competent authorities of the home State must first send the AMF a programme of activity detailing the activities and/or services that the applicant wishes to provide.

The AMF will record the company on the list of foreign managers holding a European passport in France (GECO database).

In the event of a change to the information supplied pursuant to this article, a management company authorised in accordance with Directive 2009/65/EC must provide the AMF with written notification in French of the proposed changes before making such changes.

#### **Article 21-2 – Management of AIFs in France under the freedom to provide services**

Before a management company authorised in another EU Member State in accordance with Directive 2011/61/EU may carry on its business in France under the freedom to provide services, the competent authorities of the home State must first send the AMF:

- a programme of activity detailing the service or services that the applicant wishes to provide and identifying the AIFs that it plans to manage;
- a statement indicating that they have authorised the management company under Directive 2011/61/EU.

The AMF will record the management company on the list of management companies carrying on the business of AIF management in France.

### **Article 22 – Establishment of branches in France**

#### **Article 22-1 – Establishment of branches in France to manage UCITS or provide investment services**

Before a management company authorised in another State party to the EEA agreement may establish a branch in France, the competent authorities of the home State must first send the AMF a programme of activity, an address from which documents may be requested in France, along with the names of the branch's directors.

The AMF will record the company on the list of foreign managers holding a European passport in France.

The branch will make the following information available to the AMF: CVs of directors and main managers, forward-looking information on business activity, cost accounting information listing the costs and income of the branch separately, material resources (hardware and software), business organisation

and internal controls, sales and marketing policy, investor disclosures, sales and advertising literature, standard investment mandates, and details of the investor compensation system.

In the event of a change to the information supplied pursuant to this article, a management company authorised in accordance with Directive 2009/65/EC must provide the AMF with written notification in French of the proposed changes at least a month before making such changes.

The branch of a management company authorised in another State party to the EEA Agreement that manages at least one compliant UCITS in France must send the AMF an annual disclosure statement consistent with the template provided by the AMF.

The branch of a management company authorised in another State party to the EEA Agreement whose management business in France is limited to portfolio management for third parties must send the AMF an annual disclosure statement consistent with the template provided by the AMF.

#### **Article 22-2 – Establishment of branches in France to manage AIFs**

Before a management company authorised under the AIFM Directive in another EU Member State may establish a branch in France, the competent authorities of the home State must first send the AMF:

- a programme of activity detailing the service or services that the applicant wishes to provide and identifying the AIFs that it plans to manage;
- the organisational structure of the branch;
- an address from which documents may be requested in France along with the names and contact details of the branch's directors;
- a statement indicating that they have authorised the management company under Directive 2011/61/EU.

The AMF will record the management company on the list of management companies carrying on the business of AIF management in France.

The branch of a management company authorised in another EU Member State that manages at least one AIF in France must send the AMF an annual disclosure statement consistent with the template provided by the AMF.

#### **Titre VI – Resignation and withdrawal of authorisation**

##### **Article 23 – Resignation**

##### **Specific provisions concerning investment management companies authorised under the AIFM Directive**

In accordance with Article L. 621-13-4 of the Monetary and Financial Code, the AMF may require a company to resign its status as management company of one or more AIFs under the conditions set out in Article 316-9 of the AMF General Regulation.

##### **Article 24 – Request to withdraw authorisation made at the initiative of the investment management company**

An investment management company may ask for its authorisation to be withdrawn (Cf. Form A2) if it decides, in particular, to dissolve itself, merge with another company or cease the business of managing UCITS, AIFs, other collective investments or portfolios for third parties. The company must then submit a request to the AMF. This request to withdraw authorisation must be accompanied by the minutes of the meeting of the decision-making bodies that took the decision either to change corporate purpose and name of the company (case of a business change) in accordance with the provisions of Article L. 533-10 of the Monetary and Financial Code or to dissolve the company early (case of a merger or dissolution).

Withdrawal of authorisation takes effect only on receipt of an original copy of a K-bis certificate of incorporation from the Trade and Companies Register proving that the company has a current registration or has been delisted from the register.

If judicial liquidation proceedings are brought against the investment management company and it has ceased its management activities, the AMF will withdraw authorisation at the company's request in light of the decision to open liquidation proceedings, without first requiring evidence of an amendment to the firm's corporate purpose.

An investment management company whose authorisation is being withdrawn may mention its status as an investment management company only provided it specifies that its authorisation is in the process of being withdrawn.

#### **Article 25 – Request to withdraw authorisation made at the initiative of the AMF**

In accordance with the provisions of Article L. 532-10 of the Monetary and Financial Code, the AMF may decide to withdraw the authorisation of an investment management company if the company no longer meets the conditions or undertakings on which its authorisation or a prior authorisation were based, or if the company has not used its authorisation over a 12-month period or if it has not carried on its business for at least six months, or if it obtained its authorisation through false disclosures or any other improper means.

The procedure for withdrawing authorisation is provided for in Articles 311-4 and 311-5 of the AMF General Regulation or, as regards authorisation under the AIFM Directive, in Articles 316-6 and 316-7 of the AMF General Regulation.