

AMF Instruction 2013-21

Registration arrangements for legal entities, other than portfolio management companies, managing certain Other AIF

Reference text: Article 311-1 B of the AMF General Regulation

This instruction applies to those legal entities referred to in point 3, paragraph III, Article L. 214-24 of the Monetary and Financial Code – namely legal entities exclusively managing one or more Other AIF¹

- where the total asset value calculated in accordance with Article 2 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012 falls below the thresholds laid down in Article R. 532-12-1 of the Monetary and Financial Code²;
- and where all the unitholders or shareholders are professional investors.

This instruction is addressed to those legal entities that have not opted to submit the Other AIF they manage to the rules set out in point 1, paragraph III, Article L. 214-24 of the Monetary and Financial Code.

You are reminded that Other AIF are vehicles which:

- fall under the definition of AIF laid down in paragraph I of Article L. 214-24 of the Monetary and Financial Code and clarified by AMF Position 2013-16 – Key concepts of the Alternative Investment Fund Managers Directive (available only in French on AMF website);
- but which are not listed in paragraph II of Article L. 214-24 of the Monetary and Financial Code³.

This document includes appendices, which can be accessed via the “Appendices and links” tab.

Article 1 – Registration procedure

Legal entities must register with the AMF by submitting the duly completed standard form, found in Appendix 1 to this instruction, to the following address: gjo@amf-france.org

Pursuant to Article 5.2 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012, legal entities must provide the AMF with the following for each Other AIF they manage:

- the offering document; or
- a relevant excerpt from the offering document including, at the very least, the main categories of assets in which the Other AIF may invest, the industrial, geographical or other market sectors or specific classes of assets that lie at the core of the investment strategy and a description of the Other AIF’s borrowing or leverage policy; or
- the investment strategy information form, found in Appendix 2 to this instruction.

¹ Pursuant to paragraph III of Article L. 214-24 of the Monetary and Financial Code, “AIF not referred to in paragraph II are known as ‘Other AIF’”.

² Article R. 532-12-1 of the Monetary and Financial Code:

“Total assets of AIF referred to in paragraph IV of Article L. 532-9:

1. shall not exceed the threshold of €100 million, including assets acquired using leverage; or
2. shall not exceed the threshold of €500 million where those legal entities do not use leverage and cannot redeem units or shares for a period of five years with effect from the date of their initial investment in each AIF.”

³ I.e. not constituted in the form of general purpose investment funds, private equity funds, alternative funds of funds, real estate collective investment schemes, employee savings funds, real estate investment companies, forestry investment companies, closed-ended investment companies, specialised professional funds, professional private equity funds, professional real estate collective investment schemes or securitisation schemes.

All legal entities managing Other AIF as defined in point 3, paragraph III, Article L. 214-24 of the Monetary and Financial Code must register, as set out in this instruction, by no later than 31 December of the year during which their management activities commence. Legal entities managing Other AIF as at the publication date of this instruction must register by 31 December 2013 at the latest.

Article 2 – Registration by the AMF

The AMF will register applications upon receipt. Legal entities submitting applications will be provided with confirmation of receipt.

Where an application received by the AMF is incomplete or otherwise not in order, it will be returned to its submitter stating the reasons for its return, which may fall into one of two categories:

1. Missing documents; or
2. Incomplete documents or documents not compliant with applicable regulations.

Article 3 – Updating registered information

Pursuant to Article 5.5 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012, required registration information must be kept up to date via the GECO extranet and submitted by no later than 31 December each year.

Article 4 – Procedure to be followed upon exceeding the €100 million and €500 million thresholds

Pursuant to Article 4 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012:

- Whenever the total value of assets under management exceeds the thresholds laid down in Article R. 532-12-1 of the Monetary and Financial Code and the legal entity in question does not consider this to be a temporary state of affairs, the legal entity must immediately notify the AMF that it has exceeded the relevant threshold by submitting the form found in Appendix 3 to this instruction, and must apply for authorisation as a portfolio management company under Directive 2011/61/EU within 30 calendar days in accordance with the arrangements and procedure laid down in Instruction 2008-03.
- Whenever the total value of assets under management exceeds the thresholds laid down in Article R. 532-12-1 of the Monetary and Financial Code and the legal entity in question considers this to be a temporary state of affairs, the legal entity must immediately notify the AMF that it has exceeded the relevant threshold by submitting the form found in Appendix 3 to this instruction.

Article 5 – Procedure to be followed whenever an Other AIF is considering having at least one non-professional unitholder or shareholder

Whenever an Other AIF managed by a legal entity is considering having at least one non-professional unitholder or shareholder, that legal entity must apply to be authorised as a portfolio management company in accordance with the arrangements and procedure laid down in Instruction 2008-03.