

AMF Instruction 2014-01

Programme of activity, obligations incumbent on investment services providers, passport notification

References: AMF General Regulation 311-8 to 311-12, 313-1 to 313-53-7, 314-1 to 314-76, 314-79 to 314-97, 314-105, and 315-1 to 315-49

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This document includes annexes that can be accessed using the "Annexes and links " tab:

Annex 1 – Description of portfolio management for third parties

Annex 2 – Notification – Change of investment services compliance officer

This instruction applies to investment services providers other than investment management companies.

Pursuant to Article L. 532-1 of the Monetary and Financial Code, "In order to provide investment services¹, investment firms and credit institutions must obtain approval". It should be noted that an authorisation is not required simply to provide one of more of the services referred to in Article L. 321-2 of the Monetary and Financial Code ("ancillary services²"), with the exception of clearing. Furthermore, to provide a custody account keeping service, the authorisation of the ACPR is required.

Title I - Examining the programme of activity of an investment services provider

Chapter I – Authorisation procedure

Where the programme of activity relates to the investment services referred to in 4° or 5° of Article L. 321-1 of the Monetary and Financial Code (i.e. investment advice or portfolio management on behalf of third parties), the Autorité des Marchés Financiers (AMF) is responsible for approving that programme (see Art. L. 532-4 of the Monetary and Financial Code). Where the programme of activity concerns neither investment advice nor portfolio management for third parties, the AMF forwards its observations to the ACPR.

Where the programme of activity includes the service of investment advice and/or portfolio management for third parties in addition to another investment service, the AMF approves the programme of activity relating to said advice or management, and forwards its observations about the other services to the ACPR.

Article 1 – Filing a request for initial application for or extension of approval

Once the applicant has filed with the ACPR an application conforming to the standard application provided for in Article R. 532-1 of the Monetary and Financial Code (i.e. "Investment Firm", unless it also wishes to carry on a banking activity, in which case it fills in the "Credit Institution" form), the AMF sends a copy to the ACPR. Article R. 532-3 of the Code states that the period for sending the application is five days from the date the application was received.

<http://acpr.banque-france.fr/en/licences-and-authorisations/banks/documents.html>

The regulators may ask the firm or institution to send an electronic version of the application, in addition to the hardcopy version, in order to facilitate examination of the application.

Article 2 – Examination by the AMF

During the examination process, if the application contains a request to provide investment advice or portfolio management for third parties, the AMF can ask the applicant directly for any additional information needed to examine the programme of activity. If the application does not include one of these two services, then AMF will ask the ACPR to obtain additional information, where necessary.

The AMF (solely where the authorisation application includes the investment service of advice and/or management) or the ACPR may suspend the examination deadlines specified below if the examination is unable to proceed because the application is incomplete. The deadline does not resume until the missing items are received. The applicant may send this information electronically, by postal mail or by facsimile,

¹ Investment services are defined as: order reception/transmission for third parties; order execution for third parties; dealing for own account; asset management for third parties; investment advice; underwriting; placement without firm commitment; and operation of a multilateral trading facility within the meaning of Article L. 424-1. The services are defined in Article D.321-1 of the Monetary and Financial Code.

² Ancillary services are listed in Article L.321-2 of the Monetary and Financial Code.

specifying the references of the application. Where the deadlines are suspended for a request pertaining to the investment services of portfolio management for third parties or investment advice, if the AMF does not receive all the necessary items within 60 days, the application shall be null and void and the AMF will duly inform the ACPR and applicant thereof.

Article 3 – Notifying the approval decision / observations on the programme of activity

Where the application includes investment advice or portfolio management for third parties

The AMF informs the applicant of its decision by registered letter with return receipt or by hand delivery against receipt within three months of receiving the application, pursuant to Article R. 532-5 of the Monetary and Financial Code, and it informs the ACPR of its decision.

If the programme of activity is approved, the letter informing the applicant of the AMF's decision shall contain the date of issue and the extent of the approval. The decision may be subject to suspensive conditions.

If the programme of activity is not approved, the AMF shall explain the reasons for its decision in the letter to the applicant.

Pursuant to Article R. 532-5 of the Monetary and Financial Code, the ACPR has two months from the receipt of the AMF's letter in which to make a decision.

Where the application includes neither investment advice nor portfolio management for third parties

Article R. 532-4 of the Monetary and Financial Code states that the ACPR has four months from receiving the authorisation application to inform the applicant of its decision. It informs the AMF of that decision.

The AMF sends its observations to the ACPR only within two months.

Article 3-1 – Approval of an extension to a programme of activity

The procedure is identical to the one above where an investment services provider is seeking to extend the scope of its approval. In this case, the examination periods are two months (from the date the AMF receives the application) if the extension includes the services of investment advice or portfolio management for third parties, and one month if it concerns another investment service, the ancillary service of custody account keeping, or clearing.

Pursuant to Article R. 532-6 of the Monetary and Financial Code, the ACPR has two months from receiving the AMF's letter to reach a decision if the application includes portfolio management for third parties or investment advice. In the other cases, it has three months to reach a decision, starting from receipt of the authorisation application. In any event, it shall inform the AMF of its decision.

Chapter II - Programme of activity

The content of the programme of activity is specific to each service provider. The provider shall follow the framework and fill in all the sections of the authorisation request form depending on the investment services for which it is applying.

The framework shall include the scope of the business that the provider intends to supply in connection with the investment services applied for, the inspections associated with such business, and the procedures and resources put in place to comply with the organisation and good conduct rules set forth, in particular, in Articles L. 533-10 et seq. of the Monetary and Financial Code and in Book III of the AMF General Regulation, clarified by the AMF's policy documents, as well as with the professional requirements set forth in Section II of Article L. 621-15 of the Monetary and Financial Code.

In accordance with CRBF Regulation no 96-15 of 20 December 1996 relating to the minimum capital of investment services providers, the provider is required to specify its capital, the minimum amount of which may vary depending on the investment service(s) and/or ancillary service(s) needed to carry on its business:

<i>Services provided</i>	<i>Client funds and/or securities held (Account keeping)</i>	<i>Minimum paid-in capital</i>
Order reception/transmission for third parties Order execution for third parties Asset management for third parties Investment advice	Yes	€125,000
	No	€50,000
Dealing for own account Underwriting Placement	Yes	€1,100,000
Trading for own account Underwriting Placement Other services (placement without firm commitment and operation of a multilateral trading facility as defined in Article L. 424-1 of the Financial and Monetary Code)	No	€730,000
Custody account keeping (CRBF Regulation 96-15, as amended) Clearing	Yes	€3,800,000
Business restricted to custody or administration of financial instruments in connection with employee savings schemes ³	Yes	€150,000

Article 4 - Description of the business of an investment services provider

The application shall contain a description of the business of the provider as it relates to the supply of the requested investment service(s). The description includes, inter alia, the financial instruments and/or strategies offered, the type of targeted clients and/or counterparties, the target geographical areas, and, where appropriate, the markets or other execution venues; it shall also include a description of any activities carried out in connection with the supply of ancillary services or other activities, e.g. clearing).

³ This amount is set at €150,000 for investment firms whose business is limited to custody or administration of financial instruments in connection with employee savings schemes, on condition these firms are controlled by one or more investment services providers that are also jointly and severally liable for the commitments of the subsidiary.

Client categorisation

In its authorisation application, the provider must also describe the procedures used to familiarise itself with and categorise all its clients, in accordance with Articles 314-4 to 314-9 of the AMF General Regulation.

Pursuant to 2° of Article 314-6 of the AMF General Regulation, a transaction in financial instruments is of significant size if it exceeds a gross amount of €600.

Presentation of marketing practices

The provider shall give details of the practices used to market the proposed investment services or financial instruments (e.g. use of direct sellers, distribution platforms or networks) as well as the arrangements for paying or receiving remuneration for the supply of the requested investment services, while ensuring that said arrangements comply with Article 314-76 of the AMF General Regulation and AMF position-recommendation 2013-10⁴. The application shall present a plan for the relations between the various participants involved in supplying the requested investment services and for the corresponding remuneration payments.

Specimen agreements

In addition to describing the planned activities, the provider shall supply copies of draft agreements, as well as the related procedures, pertaining to relations with its clients, counterparties and partners. It shall also provide a business plan giving details of provisional financial flows and the corresponding expenses for three financial years, outlining financial assumptions such as business inflows and commitment letters.

Article 4-1 – Description of the business of portfolio management for third parties

The programme of activity shall state the strategies used to implement the management mandate, as well as the procedures for keeping track of positions on leveraged markets and, more broadly, the arrangements for monitoring portfolios with regard to risk limits and regulatory and/or contractual constraints, among other things.

In particular, the provider shall comply with AMF positions-recommendations 2007-21⁵ and 2007-25⁶, which specify the provisions of the AMF General Regulation pertaining to portfolio management for third parties.

The application shall describe the financial instruments (equities, bonds, funds, etc.) used in the management strategies implemented by the provider. Accordingly, the standard authorisation application is adapted, where necessary, to:

- 1° use of European funds under foreign law, not authorised for sale in France, that use alternative investment management strategies;
- 2° use of unlisted securities;
- 3° use of complex over-the-counter financial contracts (also known as derivatives).

A standard framework for portfolio management for third parties is given in Annex 1 of this instruction.

The provider shall also give details of the risk management policy put in place for the proposed investment management activity and shall specify whether its business requires an independent risk control function (see AMF instruction 2012-01).

⁴Position-recommendation 2013-10: Remuneration and benefits received in connection with the marketing and management under mandate of financial instruments.

⁵Position-recommendation 2007-21: Professional obligations towards retail clients imposed on investment services providers managing a portfolio on behalf of a third party.

⁶Position-recommendation 2007-25: Q&A on the rules of conduct applicable to investment services providers.

Article 4-2 – Description of order execution/reception for third parties, own-account dealing and portfolio management for third parties

The application shall contain a detailed diagrammatic representation of the route through which orders transit, and in particular the time-stamping procedure.

If the application includes the investment services of order reception/transmission for third parties and portfolio management for third parties, then the programme of activity shall include the policy for selecting the entities to which the provider intends to send the orders it receives from clients or resulting from its investment decisions. These entities are selected based on price, cost, speed, probability of execution and payment, size, the nature of the orders and any other considerations relating to order execution.

If the application includes the investment service of order execution for third parties, then the programme of activity shall include details of the order execution policy.

Projected allocation of orders

The programme of activity shall describe the procedure for the projected allocation of orders. This procedure shall also describe the situations and conditions in which the final allocation may differ from the projected allocation that has been determined, in principle, under Section IV of Article 314-66 of the AMF General Regulation.

Article 5 - Description of human resources

The application shall include a detailed organisation chart showing the managers of the provider's businesses, the person in charge of managing its capital, and the chain of command. Details shall also be given of the shareholding structure, along with the identity of the capital providers and the percentage held by each of them.

The application shall also state the identity of the manager of each activity as well as the staff assigned to each investment service over the coming three years. (Depending on the size of the provider, the application can also include the names of all members of staff.)

The application shall also contain a general description of staff remuneration methods, distinguishing between those applicable to senior managers, asset managers, marketing managers, and the heads of supervisory functions. In particular, details shall be provided about profit-sharing arrangements or remuneration linked to personal or group performance, with a description of the method used to calculate the variable portion, where applicable.

The curricula vitae of the senior managers, asset managers, risk manager (if there is one), and the investment services compliance officer shall also be included in the application.

Article 6 - Description of data storage methods

The application shall describe the record-keeping and data storage methods used in conformity with Articles 313-49⁷ to 313-53 of the AMF General Regulation and those set forth in Regulation (EC) No 1287/2006 of 10 August 2006.

⁷ Pursuant to Article 313-49 of the AMF General Regulation, "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. [...]".

Article 7 - Description of the monitoring system

Article 7-1 - Organisation of compliance monitoring

The authorisation application shall describe the organisational arrangements put in place by the provider for compliance monitoring and risk monitoring (where the request applies to portfolio management for third parties). This includes the human resources made available and the procedures used for monitoring and reviewing investment services, in accordance with the provider's business. The description of the organisational arrangements shall comply with the provisions of the AMF General Regulation.

Details shall be provided about the names and reporting lines of the person or persons in charge of the different types of monitoring as well as the frequency and types of procedures:

1° Compliance and risk monitoring (in particular, supervision of compliance with laws and regulations, supervision of compliance with the investment management policies specified in the mandates and monitoring of risks arising from the position limits in those mandates, and monitoring of risks on derivative market positions) ;

2° Where appropriate, the procedures for monitoring assignees and branches in a country party to the European Economic Area agreement.

Details shall also be given about the information provided to the senior managers of the company and about the response and escalation procedures activated in the event of deficiencies. The provider shall retain documents detailing the steps taken in the area of internal control and, where such is the case, the measures taken to deal with any anomalies noted.

Reference shall be made to any audit committees that may exist.

Article 7-2 – Observance of market abuse prevention procedures

The provider shall describe the human and technical resources put in place to prevent market abuse. It shall give the AMF a description of its arrangements for detecting such abuse. These shall include, in particular, the arrangements for handling inside information and reporting suspicious trades to the AMF, in compliance with Book VI of the AMF General Regulation.

Accordingly, the provider shall give details about the arrangements adopted to record inside information and prevent it from being passed on or used. The arrangements shall include, in particular, the introduction of watch lists and black lists for certain financial instruments. The provider shall also describe in its authorisation application the resources implemented to oversee personal trading by employees (see Articles 313-9, 315-15 et seq. of the AMF General Regulation).

Article 8 – Preventing and dealing with conflicts of interest

Article 313-18 of the AMF General Regulation states: "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 referred to in Article 311-1 A:

"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."

In this regard, providers shall introduce and present to the AMF the arrangements that will allow them to detect, prevent and supervise conflict of interest situations. Such situations may include several clients, a client and the provider, or the provider and a partner such as an intermediary or shareholder.

Title II – Obligations of investment services providers

Article 9 – Verifying the identity and legal capacity of a new client

Pursuant to Article 314-4-1 of the AMF General Regulation, when dealing with new professional or retail clients, the investment services provider is required to verify their identity, in accordance with legal and regulatory provisions on anti-money laundering and combating terrorist financing.

Where the client has appointed someone to act on its behalf, or where it is appointed by a third party to act on the latter's behalf, the investment services provider shall collect the document attesting to that appointment.

Article 10 - Information about the organisation of the compliance function

The investment services provider shall provide the AMF with the following information about the organisation of its compliance function:

- if it does not reasonably have the financial resources to assign a person to the compliance function and has thus appointed one of its senior managers as compliance officer for investment services;
- if the compliance officer for investment services has, under his or her authority, delegated the execution of compliance duties internally, to the extent warranted by the nature, importance, complexity and diversity of his or her activities;
- where he or she has outsourced compliance functions to an employee of an entity belonging to the same central body, in which case the employee in question must hold a professional licence.

The provider may elect to outsource some compliance supervision functions to an outside firm, but it remains responsible for these functions. The AMF will assess the proposed delegation arrangements, notably the supervision plan presented by the outside firm as well as the firm's experience with and knowledge of the regulations applicable to the provision of investment services.

Article 11 – Professional conduct

I. – Pursuant to Article 313-9 of the AMF General Regulation, a personal transaction is a transaction carried out by a relevant person, as specified in Section II of Article 313-2 of the AMF General Regulation, or on that person's behalf where at least one of the following criteria is met:

1° The person is acting outside of the scope of his functions;

2° The transaction is carried out on behalf of one of the persons referred to in 2° of Section I of Article 313-9.

II. – Specifically, the personal transactions referred to in 2° of Section I of Article 313-9 are those executed by:

1° a relevant person, referred to in Section II of Article 313-2 of the AMF General Regulation, acting on his own behalf;

2° a relevant person acting on behalf of a person with whom he has close links or a family relationship, or a material interest in the outcome of the trade (even if such person has given a proxy to the relevant person) ;

3° any person on behalf of the relevant person.

However, a transaction carried out for a person close to the relevant person on his behalf is not a personal transaction, provided that the close person is the sole holder of the securities account (i.e. not a co-holder with the relevant person).

A situation in which a person has close links, within the meaning of Section III of Article 313-9, to a relevant person is a situation in which such persons are linked, inter alia, by:

a) 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;

- b) control, i.e. the relationship between two companies within the meaning of Article L. 233-3 of the Commercial Code;
- c) control by a natural person over a company characterised by one of the cases referred to in Article L. 233-3 of the Commercial Code;

In a situation where two or more natural or legal persons are linked to the same company by a control relationship as defined in *b) or c)*, these persons shall be considered to be closely linked.

Article 12 – Annual statistics

No later than four months after the close of the financial year, the provider shall send the AMF the annual compliance officer questionnaire⁸, which includes the annual information sheet on portfolio management for third parties, where appropriate. These data are sent by a secure link over the GECO extranet.

Article 13 - Trade reporting

Investment services providers that provide order execution for third parties are required to report the information required by the AMF, as specified in Articles 315-46 to 315-48 of the General Regulation.

Article 14 – Suspicious trade reporting

Investment services provider shall comply with the provisions of Articles 315-42 to 315-44 of the AMF General Regulation if they detect a suspicious trade.

Article 15 – Amending a programme of activity

If the investment services provider makes substantive changes to the programme of activity that was examined by the authorities, it shall first send them to the ACPR, which forwards them to the AMF within five business days.

In accordance with Article R. 532-6 of the Monetary and Financial Code:

- where the planned change concerns investment advice or portfolio management for third parties, the AMF has two months to make a decision and inform the ACPR,
- where the planned change concerns other investment services, the ancillary service of custody account keeping, or clearing, the AMF has one month to make its observations to the ACPR.

Changing the compliance officer

Where the provider has to change its investment services compliance officer, it shall fill in and send the form in Annex 2 of this instruction.

Title III – Notification procedures for right of establishment and freedom to provide services

Providers shall use the format on the ACPR website to file all notifications relating to the right of establishment and the freedom to provide services:

<http://acpr.banque-france.fr/en/licences-and-authorisations/banks/documents.html>

Article 16 – Freedom to provide services in Member States (passporting out)

As provided in Articles L. 532-24 and R. 532-26 of the Monetary and Financial Code, investment services providers having their registered office in France and planning to exercise their freedom to provide one or

⁸ Under Article L. 621-8-4 of the Monetary and Financial Code, the AMF requires investment services providers to submit before 30 April each year the annual report prepared in accordance with Article 313-7 of the General Regulation.

more investment services in another Member State (the host country) shall first notify the ACPR, which informs the AMF within five business days. The ACPR shall inform the host country authority of the application to provide services within one month of receiving it. The provider may then begin providing the declared services in the host country.

As provided for in Article R. 532-27 of the Monetary and Financial Code, the investment services provider shall first notify the ACPR of any planned amendments to the information reported in its passport application. The ACPR shall inform the AMF accordingly within five business days.

Article 17 – Freedom of establishment in a Member State (passporting out)

As provided in Articles L. 532-23 and R. 532-20 of the Monetary and Financial Code, investment services providers having their registered office in France and planning to establish a branch in order to provide investment services in a Member State (the host country) shall first notify the ACPR of their plan in writing (see forms below). The ACPR shall inform the AMF within five business days.

The ACPR shall notify the host country authority of the application for right of establishment within three months of receiving it, provided the administrative organisation or the financial position of the provider allows it to set up a branch. As soon as the response from the host country authority is received, or in the event that the authority does not respond within two months of receiving the notification, the branch of the investment services provider may begin to carry on its business in the host country.

As provided in Article R. 532-23 of the Monetary and Financial Code, the investment services provider shall first notify the ACPR of any changes to be made to the information provided with the passport request. The ACPR shall inform the AMF within five business days.

If firms have any questions relating to authorisation procedures for investment services providers, the information to be included in a programme of activity or the passporting procedure, they can email them to PSI@amf-france.org