

AUTHORISATION PROCEDURE FOR ASSET MANAGEMENT COMPANIES, DISCLOSURE OBLIGATIONS AND PASSPORTING

References: Articles 316-3 to 316-5, 316-10, 318-1, 319-26, 321-2 to 321-4, 321-8, 321-75 and 321-130 of the AMF General Regulation

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Pursuant to Article L. 532-9 of the Monetary and Financial Code, any company wishing to manage one or more UCITS, AIFs, foreign UCITS authorised in accordance with Directive 2009/65/EC (“UCITS”), foreign AIFs subject to Directive 2011/61/EU (“AIFM”) or other collective investments as defined in Article L. 214-191 of the Monetary and Financial Code¹ must first be authorised by the AMF as an asset management company.

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

- asset management companies that manage one or more UCITS approved in accordance with Directive 2009/65/EC (under French or foreign law);
- asset 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;
- asset 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 321-167 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 asset management companies. These legal entities, which are not classed as asset management companies (AMCs), must register with the AMF according to the procedures set out in Instruction DOC-2013-21.

This instruction also covers:

- passporting for foreign management companies wishing to manage one or more UCITS or AIFs and/or provide investment services within the scope of their authorisation, in France;
- passporting for French asset management companies wishing to manage one or more UCITS or AIFs and/or provide investment services within the scope of their authorisation, in another European Union Member State or a third country.

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 State that is a party to the European Economic Area or in a third country.

INTRODUCTORY REMARKS: APPLICABLE AUTHORISATIONS, DIRECTIVES AND REGULATIONS

The following is recalled:

To manage one or more French or foreign UCITS authorised in accordance with UCITS Directive, **a French entity** must be authorised as an AMC under that same directive. When managing UCITS, the AMC must comply with the provisions of Book III, Title I of the AMF General Regulation.

Pursuant to the second paragraph of Article 321-1 of the AMF General Regulation, any entity wishing to provide the investment services of third-party portfolio management or investment advice in addition to managing one or more UCITS must be authorised to provide those services. When providing these services, the AMC must comply

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

with the provisions applicable to investment services providers subject to Book III, Title I of the AMF General Regulation.

To manage one or more French or foreign AIFs, a French entity must be authorised as an AMC, except in the cases listed by law (see Articles L. 214-24 and L. 532-9 of the Monetary and Financial Code, and Article 33 of Executive Order 2013-676 of 25 July 2013 amending the legal framework for asset management).

Authorisation under 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 AMC 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 AMC 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 AMC 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 Book III, Title I quater of the AMF General Regulation and, by reference to Article 321-154 of the AMF General Regulation, the provisions of Title I ter applicable to asset management companies managing UCITS, unless otherwise stipulated.

Pursuant to the third paragraph of Article 316-2 of the AMF General Regulation, asset management companies authorised under the AIFM Directive wishing to provide the investment services of reception and transmission of orders on behalf of third parties, third-party portfolio management or investment advice in addition to managing one or more AIFs must be authorised to provide those services.

Pursuant to Article 321-155 of the AMF General Regulation, asset management companies managing one or more AIFs whose asset value is below the thresholds and which have not opted for full application of the AIFM Directive, and which wish to provide the investment services of reception and transmission of orders on behalf of third parties or investment advice in addition to managing one or more AIFs, must be authorised to provide those services.

When providing these services, the AMC must comply with the provisions applicable to investment services providers subject to Book III, Title I of the AMF General Regulation.

The activity of benchmark administrator pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council requires authorisation or registration in compliance with Article 34 of said Regulation.

1. TITLE I: INITIAL AUTHORISATION OF ASSET MANAGEMENT COMPANIES²

1.1. Chapter I: Authorisation procedure

1.1.1. Article 1: Filing an application for initial authorisation

Prior to any initial filing of an authorisation application, the AMF must be contacted to obtain access to the ROSA extranet.

² The term "programme of activity" covers the programme of activity and the supplementary forms relating to instruments.

Before an AMC 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 described in Annex 1 of this instruction. An original copy of the standard application package shall be provided to the AMF in electronic format via the ROSA extranet. All sections must be completed, as must all appended annexes.

The application package includes a programme of activity detailing each of the services that the applicant company intends to provide and specifying the conditions under which the company plans to provide these services. The programme of activity indicates the type of transactions proposed and the structure of the applicant company's organisation.³ The various sections of the programme of activity describe the organisational impacts related to the financial instruments the AMC plans to use.

The application for initial authorisation is filed on the extranet by an authorised person of the applicant company. He or she may be 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.

1.1.2. Article 2: Registration and review of the application by the AMF

On receipt of the application for initial authorisation, the AMF verifies that the information and documents comply with the templates appended to this instruction and that all the documents mentioned in the standard application package are included. The AMF issues a receipt upon receiving the complete application. The receipt indicates when the authorisation waiting time expires, namely 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 applicant". Applicants are reminded that this extension is not automatic and that those who do not provide the additional information that may be requested during the assessment of their application may have their application rejected.

The request for authorisation or registration as a benchmark administrator pursuant to Regulation (EU) 2016/11 of the European Parliament and of the Council is subject to the time frames set out in Article 34 of said Regulation. As part of a request for initial authorisation as an AMC, the time frame for a request for authorisation or registration as a benchmark administrator as defined by the same Regulation begins on the asset management company authorisation date, subject to the completeness of the application. If the application is complete and compliant, the decision to accept or reject authorisation or registration as a benchmark administrator can be issued with the AMC authorisation notice.

When the request for authorisation is not compliant or complete, the AMF can return it to the sender with indications on why it sends it back.

When analysing the request for authorisation, the AMF can request any complementary information that is necessary to proceed with the analysis.

³ Article 321-2 of the AMF General Regulation for asset management companies managing UCITS or, by reference to Article 321-154, for other collective investment management companies, or Article 316-3 for asset management companies authorised in accordance with the AIFM Directive.

1.1.3. 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, AMC or 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, AMC or 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, AMC or 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 in the fourth paragraph 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.

1.1.4. Article 4: Notification of the authorisation decision

The notification from the AMF informing the AMC 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 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 asset 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 AMC, 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 AMC, a letter explaining the reasons for this refusal will be sent to the applicant company.

1.1.5. Article 5: Authorisation process

Stage	Applicant company	AMF
1	Contacts the AMF.	
2		Provides, if necessary, access to the ROSA extranet for filing an application.
3	Files application for authorisation.	
4		Receives the application. Makes sure that the application package is compliant with the standard application package. 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.
5		Reviews the application, contacting the applicant if necessary to request additional information.
6	Responds to the AMF's requests for additional information, if any.	
7		Where applicable, extends the authorisation waiting period.
8		Informs the company that authorisation has been granted (with or without conditions precedent) or refused.
9	Where applicable, sends supporting documents required to lift conditions precedent within the timeframe stipulated in the notification.	
10		Receives supporting documents. Notifies the company that conditions precedent have been lifted and that the authorisation has come into effect.
11	Asset management company begins doing business.	

1.2. Chapter II: Programme of activity

1.2.1. Article 6: General points

The application package must contain a programme of activity detailing each of the services that the AMC intends to provide, specifying the conditions under which the company plans to provide these services and indicating the type of transactions proposed and the structure of the company's organisation.⁴

The content of the programme of activity is specific to each AMC. The forms and questionnaires in the standard application package as specified in Annex 1 are designed to guide companies as they describe their activities. Some of the information requested and mentioned in the standard application package 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 AMC intends to provide as part of its business activities, together with the associated controls. The programme should be tailored to reflect the portfolios managed (discretionary mandates, UCITS, AIFs, etc.) and the financial instruments used by the company as part of its investment strategy. This requirement flows from the obligation set out in the first paragraph of Article 321-23 of the AMF General Regulation whereby companies must have adequate resources that are commensurate with their business activities.⁵

The various financial instruments that the AMC may use are detailed in the relevant sections of the programme of activity. The applicant company submits to the AMF the authorisation extension request forms (Annex 4) for the financial instruments it plans to use. The AMF may review these forms when it examines the application for initial authorisation or at a later stage following initial authorisation of the AMC, if the AMC submits a request to extend the scope of its operations. Article 11 of this instruction describes the procedure to follow in such cases.

1.2.2. Article 7: Specific instruments used by the asset management company

The programme of activity (see Annex 1 of this instruction for a template) shall cover the use of the various instruments for which the applicant company has submitted a request form (Annex 4), including:

1. instruments traded on a regulated or organised market;
2. European UCITS and AIFs;
3. financial instruments not admitted to trading on a regulated or organised market;
4. real estate assets, defined in Article L. 214-36 of the Monetary and Financial Code;
5. debts and granting loans;⁶
6. non-complex or complex derivatives and financial securities involving a derivative;
7. other assets.

⁴ Article 321-2 of the AMF General Regulation for asset management companies managing UCITS or, by reference to Article 321-154, for other collective investment management companies or Article 316-3 for asset management companies authorised in accordance with the AIFM Directive.

⁵ 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.

⁶ This request is to be made using the "Other" box on the authorisation grid under the heading "Granting loans".

2. TITLE II: CHANGING DETAILS PROVIDED IN THE APPLICATION FOR INITIAL AUTHORISATION

2.1.1. 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 asset management company’s capital must be notified to the AMF.

Direct or indirect acquisitions or increases of holdings in an asset 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 asset 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 list below specifies the changes that require prior approval from the AMF. All other changes to the programme of activity or to data relating to the AMC must be declared to the AMF. All changes requiring a declaration must be made via the ROSA extranet within one month of implementation, whether they relate to changes to the master data relating to the AMC (address, names of contacts, etc.) or to changes to the programme of activity.

AMCs are required to keep the master data relating to them and their programme of activity up to date on the extranet. The master data and programme of activity must be updated within a maximum of one month of any change affecting them.

In accordance with Articles 321-4 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 AMC that the application has been rejected or is subject to restrictions. The AMF may, if the specific circumstances warrant, notify the AMC 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 AMC’s capital, the AMF shall send its decision in writing to the AMC and the proposed acquirers and sellers within 60 business days of acknowledging receipt of the application, in accordance with the conditions mentioned in Article 321-20 or Article 317-12 of the AMF General Regulation.

In the case of a major change to the AMC’s organisation or business not covered by the list below, the AMC must first contact the AMF to determine the best way to proceed.

The following changes are subject to prior approval:

- Change in direct or indirect shareholders as defined by Article 312-18 or 317-10 of the AMF General Regulation;
- Change or appointment of a director as defined in paragraph 4 of Article L. 532-9 II of the Monetary and Financial Code;
- Change or appointment of the investment manager or a financial manager where the AMC has fewer than five asset managers;
- Change of compliance and internal control officer or its first outsourcing;⁷
- Change of independent risk controller.

⁷ If outsourcing for the first time, i.e. transitioning from an in-house compliance and internal control officer to an external provider.

Section I: Changes subject to prior approval

2.1.2. Article 9: Filing and processing a request for prior approval

I. - Asset management companies concerned by the changes listed 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. The change to the master data and/or the relevant section(s) of the programme of activity on the ROSA extranet.
2. The supporting documents referred to in the same section on the ROSA extranet. The asset management company may also supply any other document that it deems necessary via the ROSA extranet.

An authorised representative of the AMC must submit the request for prior approval. He or she may be a legal representative or a specially authorised person.

The AMF is entitled to request additional information.

II. - After verifying the information provided to it, the AMF informs the AMC of its decision.

If the AMF does not accept the changes, it explains the reasons for this.

2.1.3. Article 9-1: Specific case of filing and processing a notification concerning a change in the distribution of capital

a) Definition and calculation elements

Notion of significant influence: for the application of this paragraph, the notion of significant influence is as defined in AMF Position DOC-2017-10 incorporating the joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector into the AMF's regulatory practices, and includes, for example, the existence of regular major transactions between the proposed acquirer and the AMC, each partner or shareholder's relationship with the AMC, the fact that the proposed acquirer has, or does not have, additional rights within the AMC, because of a signed agreement or provision in the Articles of association or any of the company's other incorporating documents, the fact that the proposed acquirer is, or is not, a member of the management body, of the management body in its supervisory function, or any similar body within the target AMC, whether it is represented on it or is authorised to appoint a representative, and the overall ownership structure of the target AMC or the AMC's parent company, if such exists, given particularly that the shares or holdings and voting rights may or may not be distributed between a large number of shareholders or partners, the existence of links between the proposed acquirer and the existing shareholders and of any shareholders' agreement that would give the proposed acquirer significant influence, the proposed acquirer's position within the structure of the group to which the AMC belongs, and the fitness of the proposed acquirer to participate in the AMC's operational and financial strategic decisions.

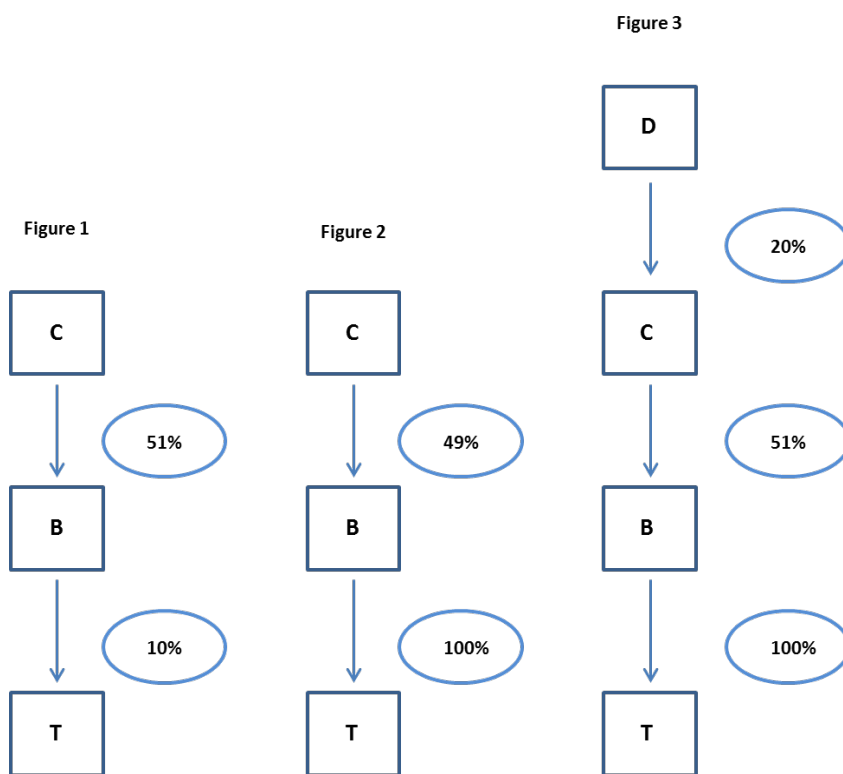
Clarifications regarding the procedure for calculating direct and indirect qualifying holdings:

In accordance with the provisions of the second and third paragraphs of Article 321-19 and the second and third paragraphs of Article 317-11 of the AMF General Regulation:

"2. Voting rights are calculated in accordance with the provisions of Article L. 233-4, paragraphs I and IV of Article L. 233-7 and Article L. 233-9 of the Commercial Code;

3. A holding is calculated by adding up, where applicable, the direct holding and any indirect holdings in the asset management company. Indirect holdings are calculated by multiplying together the fractions held in the capital of each intermediate entity and in the capital of the asset management company".

The flowcharts below, taken from the joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector as incorporated into the AMF's regulatory practices through AMF Position DOC-2017-10, clarify the procedure for the assessment of indirect qualifying holdings:



In the three examples, "T" is the AMC, the proposed acquirer being the entity at the top of the chain illustrated in the figures, namely "C" in figures 1 and 2 and "D" in figure 3, respectively. The persons controlling the indirect proposed acquirer are not shown in the figures but are taken into account in the examples.

First example

In figure 1, after the acquiring of control of B by C, C would be deemed to have indirectly acquired a qualifying holding in the AMC, according to the control criterion, given that the entity controlled, B, has a qualifying holding in T equivalent to 10%. All the other persons directly or indirectly holding control of C, would also be deemed, according to the control criterion, to have indirectly acquired a qualifying holding in the AMC and the size of the holding acquired by C and by any such person would be deemed to be equivalent to 10%. The multiplication criterion does not need to be applied.

Second example

In figure 2, as C does not acquire control of B, no qualifying holding is deemed to have been acquired when the control criterion is applied. In order to assess whether a qualifying holding has been indirectly acquired, the multiplication criterion must be tested. This involves multiplying the percentage of the holding in B acquired by C by the percentage of the holding in T held by B ($49\% \times 100\%$). As the result is 49%, a qualifying holding will be deemed to have been indirectly acquired by C.

It should therefore be concluded that C, and any person who directly or indirectly controls C, has indirectly acquired a 49% qualifying holding.

The multiplication criterion should be applied to any of C's shareholders that don't control C, starting with the lowest level in the chain of companies, which represents the direct holding in the AMC.

Third example

In figure 3, as D does not acquire control of C, there will be no indirect acquisition of a qualifying holding according to the control criterion. In order to assess whether D should be considered to have indirectly acquired a qualifying holding in T, the multiplication criterion should be applied. This requires the multiplying of the percentage holdings for the entire chain of companies (namely D's holding in C, C's holding in B and B's holding in T). The percentage arrived at is 10.2%.

D should be deemed to have indirectly acquired a qualifying holding in T.

It should be concluded that each person who directly or indirectly has control of D has also indirectly acquired a 10.2% qualifying holding.

b) Notification procedure and processing for the filing and processing of a notification of a change in the distribution of capital

I. - Pursuant to Article 321-18 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 directly or indirectly acquire, increase, decrease or sell a qualifying holding in an asset management company. Notice must be given to the AMF by the person or persons concerned before the transaction is executed, if one of the following requirements is met:*

1. The fraction of the capital or 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 asset management company becomes or stops being a subsidiary of the person(s) concerned;
3. The person or persons gain significant influence over the asset management company's management as a result of this transaction".

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

1. The change to the master data and/or the relevant section(s) of the programme of activity on the ROSA extranet.
2. The supporting documents referred to in the same section on the ROSA extranet. The AMC may also supply any other document that it deems necessary via the ROSA extranet.

An authorised representative of the AMC must submit 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 321-20 or, in the case of authorisation under the AIFM Directive, with Article 317-12 of the AMF General Regulation.

II. - In the case of transactions designed to decrease or sell a qualifying holding, after verifying the information provided to it, the AMF informs the AMC and proposed seller of its decision regarding the application.

If the sale does affect the terms under which firm's authorisation was granted, the AMF informs the AMC and proposed seller of this, indicating the reasons why it intends to reject the application to modify the authorisation in accordance with Article 321-4 or, in the case of authorisation under the AIFM Directive, with Article 316-5 of the AMF General Regulation. The AMC and the proposed 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 a qualifying holding and requiring prior approval, after verifying the information provided to it, the AMF informs the AMC and proposed acquirer of its decision regarding the application.

If the AMF does not accept the application, it explains the reasons for this.

IV. - Furthermore, in accordance with Article 321-20 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 and which change the breakdown of ownership between the existing shareholders of the asset management 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”.

Each case of acquisition, increase or decrease of a qualifying holding results in a change to the relevant master data and/or the relevant section(s) of the programme of activity on the ROSA extranet.

Section II: Changes requiring disclosure

2.1.4. Article 10: Procedures governing the exchange of information between the asset management company and the AMF

Asset management companies concerned by changes that are not listed in Article 8 and that must be declared to the AMF should make a disclosure to the AMF in accordance with the following procedures.

This declaration shall include:

1. The change to the master data and/or the relevant section(s) of the programme of activity on the ROSA extranet;
2. The supporting documents referred to in the same section on the ROSA extranet. The AMC may also supply any other document that it deems necessary via the ROSA extranet.

An authorised representative of the AMC must submit the declaration. He or she may be a legal representative or a specially authorised person. The AMF is entitled to request additional information.

The AMF is entitled to request any additional information or documents from the AMC. If the change affects the scope of the AMC’s authorisation, the AMF notifies the AMC of this in a letter indicating the reasons for this decision and the consequences, if any, for the AMC’s authorisation.

3. TITLE III: EXTENDING AN AUTHORISATION

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

- if it wants to provide a new investment service,
- if it plans to select new instruments,
- 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).

For the purposes of this title, an AMC’s request for authorisation or registration as a benchmark administrator pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 is equivalent to an authorisation extension. Notwithstanding Article 13 of this instruction, a request to extend authorisation as a benchmark administrator is subject to the time frames set out in Article 34 of said Regulation.

3.1.1. Article 11: Process of extending an authorisation

Stage	Asset management company	AMF
1	Files application to extend authorisation (application submitted electronically).	
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	Responds to the AMF's requests for additional information, if any.	
5		Where applicable, extends the authorisation waiting period.
6		Notifies the company of the decision to approve (without prejudice to conditions precedent) or reject the extension to the authorisation.
7	Where applicable, sends supporting documents required to lift conditions precedent within the timeframe stipulated in the notification.	
8		Receives supporting documents. Notifies the company that conditions precedent have been lifted and that the extension to the authorisation has come into effect.
9	Starts doing business relating to the extension to the authorisation.	

3.1.2. Article 12: Filing an application to extend an authorisation

Before the authorisation of an AMC may be extended, the AMC must first file with the AMF the information requested at the time the relevant information is changed on the ROSA extranet.

An authorised representative of the AMC must submit 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.

3.1.3. 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 form(s) submitted (Annex 4) 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 filed in full 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 applicant”.

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.

The AMC is not required to resubmit to the AMF the information or documents that it previously provided with its original application for authorisation, provided such information or documentation is up to date. The AMC must refer to the forms in Annex 4 to identify the sections of the programme of activity to be completed.

3.1.4. Article 14: Notification of decision regarding the authorisation extension

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

If the AMF refuses to extend an authorisation, it explains the reasons for this to the applicant.

4. TITLE IV: OTHER DISCLOSURE OBLIGATIONS WITH RESPECT TO THE AMF (NON-EXHAUSTIVE LIST)

4.1.1. Article 15: Financial statements of the asset management company

In accordance with Article 321-28 of the AMF General Regulation,⁸ within six months of the end of the financial year, the AMC must file via the ROSA extranet 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 statutory auditor’s general and special reports.

⁸ Or Article 318-2 for investment management companies authorised under the AIFM Directive as regards their AIF management business.

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.

4.1.2. Article 16 - Annual statistics and internal control report

Pursuant to Article 321-75 of the AMF General Regulation,⁹ within four and a half months of the end of the financial year, the AMC must send the AMF via the ROSA extranet certain required information in a duly completed annual disclosure statement along with the annual control report prepared in accordance with the provisions of Article 321-36 of the General Regulation.¹⁰

4.1.3. Article 16 – Reporting compensation and non-compliance with investment restrictions

Pursuant to Articles 318-37-1 and 321-75-1 of the AMF General Regulation, the AMC must send the AMF the form on compensation paid out for any non-compliance with investment restrictions, via the ROSA extranet, by 31/10/2021 at the latest, and then no later than 1 calendar month following the end of each quarter of the calendar year.

The fact that the AMF should choose to target “active” non-compliance (that is excepting any cases occurring beyond the control of the asset management company and not resulting from the maturity of a financial instrument held by the fund) with investment and asset structure rules in this data collection should in no case be interpreted as a regulatory comfort granted to investment management companies with regard to “passive” breaches.

4.1.4. Article 17 - Other information relating to collective investments managed by the company

The AMC must send the AMF, via the ROSA extranet, net asset values and regulatory documents (where applicable, the KID or KIID and/or prospectus) for each collective investment scheme that it manages, as well as the other required documents laid down in Instructions DOC-2011-19, DOC-2011-20, DOC-2011-21, DOC-2011-22, DOC-2011-23 and DOC-2012-06. The final KID or KIID and/or prospectus must be submitted by the AMC after the collective investment schemes have been authorised. The ROSA database must be up to date with the current versions of the KID or KIID and/or prospectus, which must be filed by the AMC.

4.1.5. Article 17-1 - Information useful for the fulfilment of the AMF's monitoring and supervisory function

For the management of UCITs and AIFs, the information disclosed by asset management companies to the Banque de France in line with Articles L. 214-19 and L. 214-24-54 of the Monetary and Financial Code is tantamount to submission to the AMF of the information required in accordance with Article 321-130¹¹ of the AMF General Regulation.

Notwithstanding the information transmission procedure provided for in the previous paragraph, the AMF may request, from the person or entities referred to in the second paragraph of Article L. 621-9 of the same code, any documents or information that are useful for the fulfilment of its monitoring and supervisory function (e.g. files and minutes of supervisory bodies, risk committees, etc.).

4.1.6. Article 18 - Major holding and takeover disclosures applicable to AIF asset management companies

⁹ Or Article 318-37 for investment management companies authorised under the AIFM Directive as regards their AIF management business.

¹⁰ 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.

¹¹ Or Article 319-26 for investment management companies authorised under the AIFM Directive as regards their AIF management business.

Requirements concerning authorisation under the AIFM Directive

Asset 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 holdings in unlisted companies¹² and/or take control¹³ of unlisted companies or issuers.¹⁴

The disclosure must be made to the AMF via the AMC's ROSA 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 via the ROSA extranet.¹⁵
In the event of problems, you may send an email to gio@amf-france.org.

4.1.7. Article 18-1 - Asset management companies managing AIFs: occasional breach of the threshold

Pursuant to Article 4 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012, if the AMC manages AIFs without authorisation under the AIFM Directive (initially, the total value of assets managed by the AMC, 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 AMC considers that the situation is not of a temporary nature, it must notify the AMF without delay via the ROSA extranet and must request an authorisation under the AIFM Directive within 30 calendar days;
- if the AMC considers that the situation is of a temporary nature, it must notify the AMF without delay via the ROSA extranet of this instruction.

5. TITLE V: PROVISION OF INVESTMENT SERVICES UNDER THE FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT IN THE EUROPEAN ECONOMIC AREA

5.1. Chapter I: Passport for domestic companies conducting business outside France

5.1.1. Article 19: Freedom to provide services

5.1.2. Article 19-1: Management of UCITS or provision of investment services under the freedom to provide services (passport under Directive 2009/65/EC)

Any French AMC wishing to carry on UCITS management activities or provide investment services within the territory of another Member State for the first time under the freedom to provide services must send the AMF, via the ROSA extranet, notification of its intention to exercise the freedom to provide services, a template for which can be found in Annex 6.1 to this instruction.

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

¹² 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).

¹³ Notion of control as defined in Article L. 214-24-23 of the Monetary and Financial Code.

¹⁴ As defined by 2° of Article L. 214-24-23 of the Monetary and Financial Code.

¹⁵ A signature (user name and password) is needed to log in. This information is sent to the official email address of each asset management company.

5.1.3. Article 19-2: Management of AIFs or provision of investment services under the freedom to provide services (passport under Directive 2011/61/EU)

Any French AMC authorised under the AIFM directive wishing to carry on AIF management activities or provide investment services within the territory of another Member State for the first time under the freedom to provide services must send the AMF notification of its intention to exercise the freedom to provide services (template provided in Annex 6.2 to 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 AMC is planning a change to the information included in the notification of intention to exercise the freedom to provide services, the AMC 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.

5.1.4. Article 20: Establishment of branches

5.1.5. Article 20-1: Establishment of branches to manage UCITS or provide investment services (passport under Directive 2009/65/EC)

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

The AMC shall subsequently inform the AMF 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 AMC 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 321-141 of the AMF General Regulation, the AMC 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 AMCs in other Member 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.

5.1.6. Article 20-2 - Establishment of branches to manage AIFs or provide investment services (passport under Directive 2011/61/EU)

Any French AMC authorised under the AIFM directive wishing to establish a branch within the territory of another Member State must send the AMF 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 AMC is planning a change to the information included in the notification of intention to exercise the freedom of establishment, the AMC 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 AMC 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 AMCs in other Member 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.

5.2. Chapter II: Passport for non-French companies conducting business in France

5.2.1. Article 21 - Freedom to provide services in France for European management companies

5.2.2. Article 21-1 - Management of UCITS or provision of investment services in France under the freedom to provide services (passporting under Directive 2009/65/EC)

Before a management company authorised in accordance with Directive 2009/65/EC in another Member State 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 (ROSA extranet).

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 notification in French of the proposed changes before making such changes.

5.2.3. Article 21-2 - Management of AIFs in France under the freedom to provide services or the provision of investment services (passport under Directive 2011/61/EU)

Before a management company authorised in another 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.

AMF will register the management company concerned in the list of management companies operating in France.

5.2.4. Article 22 - Establishment of branches in France by a European management company

5.2.5. Article 22-1 - Establishment of branches in France to manage UCITS or provide investment services (passporting under Directive 2009/65/EC)

Before a management company authorised under Directive 2009/65/EC in another Member State 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 Member State 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 Member State whose management business in France is limited to portfolio management for third parties (discretionary management) must send the AMF an annual disclosure statement consistent with the template provided by the AMF.

5.2.6. Article 22-2 - Establishment of branches in France to manage AIFs or provide investment services (passport under Directive 2011/61/EU)

Before a management company authorised under Directive 2011/61/EU in another 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 register the business concerned on the list of management companies operating in France.

The branch of a management company authorised in another 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.

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

6. TITLE VI: RESIGNATION AND WITHDRAWAL OF AUTHORISATION

6.1.1. Article 23: Resignation

Specific provisions concerning asset 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.

6.1.2. Article 24 - Request to withdraw authorisation made at the initiative of the asset management company

An AMC may ask for its authorisation to be withdrawn if it decides, in particular, to dissolve itself, merge with another company or cease the business of managing UCITS, AIFs, or other collective investments. 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 the corporate purpose and name of the company (case of a business change) in accordance with the provisions of Article L. 532-10 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 AMC 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 AMC's corporate purpose.

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

6.1.3. 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 AMC 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 321-5 and 321-6 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.

The terms and conditions for withdrawing or suspending an authorisation or registration as a benchmark administrator pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council are set out in Article 35 of said Regulation.