

Implementation of MiFID: member state procedures for the Authorisation of investments firms in France

French Financial Markets Authority- AMF

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Agenda

Introduction

Part I : Implementation of MiFID - brief presentation of the legislative and regulatory framework in France

- ⇒ French approach (A),
- ⇒ Main changes in the texts (B)

Part II : Presentation of the requirements for authorisation of investment firms; especially for asset management companies

Introduction

- The Markets in Financial Instruments Directive “MiFID” is a European Union law that provides harmonised regulation for investment services across the member states of the European Economic Area.
- The main objectives are to increase competition and consumer protection in investment services. As of the 1st November 2007 it replaced the former Investment Services Directive.
- MiFID introduced the concept of “maximum harmonisation” which does not permit states to ‘gold plate’ EU requirements; the objective of which is to create/maintain ‘a level playing field’.
- Key aspects: authorisation, regulation and passporting of ISPs (investment services providers), client categorisation, client order handling, pre trade transparency, post trade transparency, best execution, systematic internaliser.

MiFID in France

- MiFID was implemented in France by modifying the French Monetary and Financial Code by means of a government decree in April 2007.
- The French Financial Market Authority's (AMF) General Regulations were also amended to transpose the relevant parts of MiFID
- The effective date of implementation in France was 1st November 2007.

Part I : Implementation of MiFID - brief presentation of the legislative and regulatory framework in France

I(A)- AMF's approach to transposition of MiFID (2007):

As MiFID is a maximum directive

- It gives Member States a certain number of possible exemptions
- In France's case, for example, we made use of the exemptions concerning tied agents, eligible counterparty etc, in order to encourage innovation and competition at a European level.

I(A)- Approach to transposition of MiFID (2007):

- ⇒ Removal from the General Regulations of the AMF those rules that had become inconsistent with the directive's framework;
- ⇒ Limiting the addition of specific domestic rules except, where appropriate, in the following cases:
 - The European directive creates options or creates possibility to accommodate certain national legislation;
 - The existing General Regulations of the AMF are deemed to provide the essential guarantees.

I(B)- Changes in authorisation procedure, programme of operations and passport procedures for ISPs

- Consequences of MiFID are that:
- The authorisation procedure of the AMF for French companies has been simplified.
- Only those European companies authorised in their home state for services under MiFID can benefit from the MiFID passport to another European member state, such as France
- As under MiFID a host country regulator such as the AMF no longer has the right to control the ISP, the AMF's control concentrates on the marketing documents of the ISP. **The AMF has the power to request prior communication of marketing communications and to require their modification when they are unclear, unfair or misleading**

Main changes regarding organisational rules for ISPs

French Monetary Code created following common set of rules applicable to all ISPs in France:

1. Compliance system (Internal control system & Internal audit)
2. Responsibility of senior management and the supervisory function
3. Complaints handling system
4. Personal transactions by staff
5. Safeguarding of clients assets
6. Conflicts of interest
7. Professional licenses
8. Record keeping (phones conversations, IT)
9. Delegation/outsourcing of collective investment management activities (limited to non core business activities)

Other rules for ISPs

- Post trade transparency obligations have not been extended to financial instruments other than shares;
- Transaction reporting requirements (total amount of the transaction and theoretical date of clearing and settlement); various reporting channels to be accepted and waiver granted when information received otherwise by AMF;

Part II : Presentation of the Operational requirements for the authorisation in France : focus on Asset Management Companies

Asset management companies in France

- Under the Monetary and Financial Code, asset management companies are investment firms whose main business is asset management (individual portfolios and collective investments schemes).
- The AMF gives an authorisation to asset management companies when they are set up. Before granting this authorisation, the AMF checks the following:
- that the company's registered office and central administration is located in France;
- that the company has sufficient initial capital and the required legal form to carry out asset management activities;
- that the company has provided the names of shareholders with significant equity holdings, together with the amounts of these holdings, to allow the AMF to assesses their qualifications;
- That the company is actually managed and its policies are determined by individuals having the necessary integrity, qualifications and experience for their positions.
- To receive an authorisation, asset management companies must also have a programme of operations. This must be consistent with the planned scale of activity and must be regularly updated.
- The list of authorised asset management companies is available on the AMF website (591 in September 2010)

Regulation of asset management companies

- Conduct of business rules:
 - Manage assets in the sole interest of unit holders of CIS,
 - Conflicts of interests : principle of “Chinese wall” from other investment services or financial entities of the same group

- Other rules for the Asset Management Company:
 - Minimum capital : 125 000 Euros
 - Legal type (corporate law)
 - Specific program of operations
 - CIS: obligation to perform appropriate and adequate due diligences in compliance with the program of operations of the entity
 - CIS: investments respect the strategy described in the documents presenting the fund

Regulation of asset management companies

- **Regulation tools:**
 - authorisation of new asset management companies
 - and of changes in management companies (ex : change of an asset manager)
 - ongoing supervision
 - on site visits : to test the reality of implementation of internal procedures and controls as described in the application file for authorization

Focus on the ability of the management company, through its resources and procedures, to comply with AMF regulation

Regulation of marketing for CIS managed by asset management companies

- **Information delivered to retail investors - including marketing documents – must be :**
 - 1. Clear,**
 - 2. Fair**
 - 3. Not misleading (MiFiD Directive)**

However.....

- Changes in the European legal environment tend to allow more autonomy to investments firms
- The European Commission questions the possibility for regulators to review marketing material before a CIS is launched on the market
- The AMF is continuously reviewing texts and procedures in order to adapt the regulatory framework to this ever changing environment

- **Granting more responsibilities to management companies should not be detrimental to investor protection provided that:**
 - The rules applicable to management companies are implemented in harmonized very across 27 nations
 - Streamlining ex-ante approval of CIS is adequately compensated by:
 - ✓ Monitoring of management companies risk control programs
 - ✓ Closer supervision of the distribution of CIS
 - ✓ Dissuasive enforcement legislation and cross border controls and investigation
 - **Ex-ante control of CIS compliance and marketing material compliance still remains useful**

THANK YOU FOR YOUR ATTENTION