

Paris, 21 May 2007

TRANSPOSING MiFID INTO THE AMF GENERAL REGULATION

The executive order dated 15 May 2007, approving the amendments to the General Regulation of the French securities regulator, the Autorité des Marchés Financiers (AMF), was published in the Official Journal of the French Republic on 16 May 2007. The new measures concern Book III (Investment Service Providers) and Book V (Market Infrastructures). They transpose the Markets in Financial Instruments Directive (MiFID), and, in accordance with the directive, will take effect on 1 November 2007.

The version of the General Regulation published today results from close collaboration between the AMF and all relevant parties and is part of the MiFID transposition process in France. The directive, which seeks to complete the single European market in financial services, radically alters the way in which France's financial markets have been organised until now.

Main amendments to the AMF General Regulation

Book III: Investment Services Providers

Book III has been totally restructured because MiFID makes no distinction between firms that provide an individual discretionary management service and those providing other investment services. The overhaul has resulted in the creation of a common set of rules applicable to all investment services providers (ISPs) and consistent with the distribution of powers between the AMF and CECEI, the body responsible for overseeing credit institutions and investment firms.

These far-reaching changes include:

- a new system for preventing and managing [reprise de la terminologie de la directive d'application] conflicts of interest: the General Regulation provides a highly precise description of the measures and procedures to be adopted by ISPs, including the requirement to establish a policy on conflicts of interest and to maintain and regularly update a record of conflicts that have been observed;
- rules of conduct based on a clear-cut differentiation between protection regimes for various types of client: the basic principle for classifying clients, which ISPs will be required to do, has thus been established, with a segmentation between non-professional clients, professional clients and, for some services, "eligible counterparties";
- the principle of best execution of client orders and the requirement to adopt an order execution policy, all based entirely on the directive.

Other aspects of the existing regulations have been amended to a lesser extent. For example, MiFID transposition has brought about no substantive changes to compliance control, while the rules on professional accreditation have been maintained.

These amendments were put out for public consultation until 1 March 2007. The main additions were outlined in a companion memo to the draft General Regulation, which was submitted for consultation and can be downloaded in English from http://www.amf-france.org/documents/general/7643_1.pdf

Presentations for different categories of market participant can also be downloaded:

Asset management companies: http://www.amf-france.org/documents/general/7623_1.pdf

ISPs other than asset management companies: http://www.amf-france.org/documents/general/7637_1.pdf (prepared in conjunction with the Commission Bancaire and CECEI)

A summary of responses to the consultation will be posted on the website shortly.

Book V: Market Infrastructures: new market architecture with competition among order execution venues

By introducing the principle of competition for the trading and execution of securities orders, the directive has ushered in a major change in the way French markets are organised. MiFID does away with the option allowed under the 1993 Investment Services Directive for countries to demand that orders be centralised on a regulated market; instead, it establishes competition between order execution methods and venues.

Adopting the same approach as MiFID, Book V lays down the principles governing the execution of orders on different venues, namely:

- regulated markets: the regulatory framework for these markets has been set out in greater detail in accordance with the directive;
- multilateral trading facilities (MTFs): operating an MTF is now considered as an investment service;
- systematic internalisers: the rules for internalisers stem directly from the European regulations.

As a quid pro quo for opening up execution methods and venues to competition, the directive provides for pre-trade and post-trade transparency of bid prices and recorded prices in order to verify best execution (see above).

A public consultation on these new rules was held until 13 April 2007. The presentation of the draft General Regulation can be downloaded from http://www.amf-france.org/documents/general/7687_1.pdf

A summary of consultation responses will be published shortly.

Methodology guided by the Better Regulation approach

Two key principles underpin MiFID transposition:

- a wide-ranging process of consulting and explaining, launched in September 2005 in collaboration with the entire French financial community (AMF Board, industry associations, stakeholders, consultative commissions) and also with European talking partners (European Commission, CESR, other regulators);
- faithful transposition of the directives, limiting purely national rules to the strict minimum and, wherever possible, using the same terminology as the directives and making only those drafting adjustments that are absolutely necessary.

Going forward

In terms of regulation, the AMF will start work on bringing the rest of the General Regulation into conformity, particularly Book IV (Collective Investment Products) and Book II (Issuers and Financial Disclosure). It will also have to update the instruments, notably the AMF instructions, used to implement the General Regulation.

The AMF will also devote its energies to interpreting and enforcing the regulations. For this, it will collaborate with industry associations, particularly those responsible for preparing codes of conduct that may be submitted for AMF approval.

Furthermore, the Level 3 work being carried out by CESR, of which the AMF is an active member, will enable all European regulators to apply the directive and its implementing regulations harmoniously.