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Object : The conditions of access and exercise of the Financial Investment Advisor

Order No. 2016-827 of 23 June 2016 on markets in financial instruments adapts French legislation to several European texts.

In particular, it transposes Directive 2014/65/EU, known as 'MiFID II', and takes the measures implementing European Union Regulation No 600/2014, known as 'MiFIR', both of 15 May 2014.

These two texts introduce a new organization of the markets for financial instruments which fills the gaps in the current legal framework - resulting from Directive 2004/39/EC of 21 April 2004, known as "MiFID I" - and ensures that the negotiation takes place on regulated platforms where appropriate, in particular by creating a new category of platforms: organized trading systems.

They also strengthen investor protection and the supervisory role and powers of regulators by giving them new powers to prohibit or restrict the distribution of financial instruments.

Order of June 23, 2016 specifies in particular certain conditions of access and exercise of the financial investment advisor (hereinafter "CIF"), such as adhering to an accredited professional association.

This Order comes into force on January 3, 2018.

1. Conditions of age, good repute and establishment

Pursuant to Article L. 541-2 of the French Monetary and Financial Code (hereinafter "CMF"), the CIF must ordinarily reside or be established in France.

According to the same article, he must also satisfy the conditions of age, professional competence, and good repute, set out in Article D541-8 of the CMF, namely:

- The CIF must have the legal majority ;
- He must not be subjected to:

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- a) A prohibition of temporary or permanent exercise of an activity or a service pursuant to the provisions of Article L. 621-15 of the CMF or on the basis of a sanction pronounced before 24 November 2003 by the Securities and Exchange Commission, the Financial Market Council ("*Conseil des marchés financiers*") or the Disciplinary Council of Financial Management ("*Conseil de discipline de la gestion financière*");
- b) The sanctions provided for in Articles 4 and 5 of Article L. 613-21 of the CMF or paragraphs 3° to 5° of Article L. 310-18 of the French Insurance Code.

When the CIF is a legal entity, it shall be the natural persons having the power to manage or administer that legal person who must satisfy the conditions of age, good repute and professional competence.

2. To subscribe to a professional liability insurance

Under Article L. 541-3 of the CMF, the CIF must be able to justify at any time the existence of an insurance contract covering it against the pecuniary consequences of its professional civil liability in case of breach of his professional obligations.

The minimum levels of coverage for the professional liability insurance contract are set out in art. D. 541-9 of the CMF.

3. To join a professional association

Under Article L. 541-4 of the CMF, all CIF must adhere to one – and only one – professional association approved by the French Financial Markets Authority (Autorité des Marchés Financiers).

This association is responsible for monitoring the individual professional activity of its members, their collective representation and the defense of their rights and interests.

For the purpose of the membership of the financial investments advisor, the association verifies that he has a program of activities.

It assesses the quality of this program in the light of the obligations laid down in Articles L. 541-2, L. 541-3 and L. 541-8 of the CMF, as well as the conditions under which the CIF intends to exercise his activity.

4. Be registered with the Single Register of Insurance, Banking and Finance Intermediaries (hereinafter "ORIAS")

Under Article L. 541-4-1 of the CMF, each CIF must be registered in a register maintained by ORIAS after verification that the CIF fulfils the conditions for access to the profession in terms of professional competence, good repute, underwriting of an insurance contract and membership of an association of CIF.

To that end, he provides supporting documents at the time of his registration, and must pay an amount of 30 euros to the ORIAS.

5. Not to receive funds unrelated to the performance of the CIF functions nor financial instruments

According to Article L. 541-6 of the CMF, the CIF must not receive from its clients any funds other than those intended for the remuneration of its financial investment advice activity. Furthermore, he cannot receive financial instruments from its clients.

6. To pay an annual contribution to the AMF

Finally, the CIF must pay the AMF an annual contribution of a fixed amount of 450 euros due in respect of the AMF's audit mission concerning compliance by the CIF with the provisions applicable to them.

Bibliography

Monetary and Financial Code

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Website of the Autorité des Marchés Financiers, "*S'informer sur le statut de conseiller en investissements financiers (CIF)*," available at: <http://www.amf-france.org/Acteurs-et-produits / Marketing / Financial Advisors>

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