

The Brief

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The Derivatives Group

French Solicitation Decree: Thresholds Set at Last!

The Financial Security Act dated August 1, 2003, which substantially amended the legislative provisions governing financial solicitation in France⁽¹⁾, has provided that French financial solicitation rules (the "**Solicitation Rules**") were not applicable to certain entities such as (i) qualified investors ("*investisseurs qualifiés*") ("**QIs**") and (ii) legal persons, whose total balance sheet, profit and loss statement, amount of managed assets, revenues or number of employees are greater than a threshold to be set by decree (the "**Solicitation Decree**").

A Long-Awaited Decree

The Solicitation Decree, published on 29 September 2004, was impatiently awaited by investors anticipating to trade derivatives in France. Solicitation Rules involve notably compliance with statutory requirements and information duties and may restrict the trading of derivatives. Criminal and civil liability of the soliciting entity may also be sought by counterparties in case of non compliance with its provisions. Accordingly, new safe harbours for solicitation were very welcome.

QIs vs. Corporate Entities

The QIs regime is often used when trading derivatives in France with banks. Where banks automatically qualify as QIs, this is only an option for corporate entities and only a few of them have chosen to qualify as such. Thanks to this Solicitation Decree, a large number of corporate entities will now be out of the scope of the Solicitation Rules. Accordingly, banks as well as corporate entities will now be able to trade derivatives with legal persons, notably corporate entities qualifying for the new regime without having to comply with the Solicitation Rules.

⁽¹⁾ These provisions are codified under Article L. 341-1 and seq. of the French Monetary and Financial Code (*Code monétaire et financier*).



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Liberal Thresholds Set

The thresholds are set as follows:

1. Euro 5 million for the aggregate balance sheet;
2. Euro 5 million for the turnover (*chiffre d'affaires*) or otherwise for the amount of the income;
3. Euro 5 million for the amount of managed assets; and
4. 50 persons for the annual average number of employees.

These thresholds are not cumulative. They are assessed in the light of the latest consolidated accounts or, failing that, of the company's accounts as made public and, as the case may be, as certified by the auditors (*commissaires aux comptes*).

Derivatives Trading in France

The new Solicitation Decree should encourage investors to trade more freely with qualifying corporate entities in France. Combined with the latest reforms of credit derivatives, commodities derivatives, emissions trading and the upcoming synthetic securitisation reform, it is expected to further increase competitiveness within the French derivatives market-place.

For any queries you may have in relation to the Solicitation Decree, please do not hesitate to contact any of the lawyers referred to below:

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The present memorandum is a summary of certain legal reforms introduced or to be introduced in France. It is circulated for information purposes only and should not be used as the basis for any business or investment decision without specific legal assistance.

You can also consult this brief on our website, in the Publications section.

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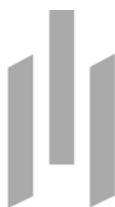
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