

AMF Instruction DOC-2008-04

Application of business conduct rules to marketing of units or shares in UCITS or AIFs by asset management companies, management companies or managers

Reference texts: Articles 411-129 I and 421-26 I of the AMF General Regulation

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This instruction applies to marketing in France by asset management companies¹ of units or shares in UCITS or AIFs,² with a view to their subscription or redemption by investors.³

The provisions of this instruction also apply, within the limit of the activities they are entitled to conduct in France, to management companies established in other European Union Member States and to managers established in third countries.

This instruction therefore does not apply to:

- transfers between UCITS or AIF unit or shareholders, whether the said operations are executed on a regulated market or multilateral trading facility, or not;
- relations between the asset management company and the entity in charge of marketing the units or shares in the UCITS or AIF.

Title I - General

Article 1 - Services provided within the framework of marketing

1.1 – When marketing units or shares in UCITS or AIFs, asset management companies may be called upon to provide investors with either or both of the following two services:

- investment advice services within the meaning of D. 321-1, 5) of the Monetary and Financial Code;
- subscription or redemption order reception and processing services defined in Article 2 hereafter.

¹ It applies both to asset management companies governed by Book III, Title I of the AMF General Regulation and to asset management companies governed by Book II, Title Ia of said General Regulation.

² Except for employee savings schemes. Marketing of employee savings schemes shall be addressed specifically.

³ The notion of investors also refers to asset management companies acting on behalf of a UCITS, AIF or client under discretionary management.

1.2 – Advice provided by asset management companies, not to the investors but to the entities in charge of marketing the UCITS or AIF units or shares, shall not constitute an investment advice service as referred to in 1.1 above.

1.3 – Within the framework of marketing by third parties of their UCITS or AIFs, asset management companies may find themselves in contact with the investors without providing said investors with an investment advice service and without receiving or processing any orders from the same.

Article 2 - Order processing

2.1 – When subscription or redemption orders pertaining to units or shares in a UCITS or AIF are centralised by another person than the asset management company marketing it, processing of said orders is the operation by which the asset management company, after receiving the orders from the investor, itself transmits those orders to the centraliser for subscription or redemption to be executed.

2.2 - When subscription or redemption orders pertaining to units or shares in a UCITS or AIF are centralised by the asset management company marketing it, processing of said orders is the operation by which the asset management company itself takes all necessary measures for subscription or redemption to be executed.

2.3 – Conversely, mere receipt by the asset management company of a copy of the order, requiring no follow-up action on its part, given that the order has been transmitted directly at the same time to the centraliser of the UCITS or AIF by the investor or by another intermediary, shall not be deemed to constitute processing of the order.

Article 3 - Business conduct rule application principles

3.1 – The business conduct rules referred to in the present article are those indicated in Book V, Title III, Chapter III, Section 5 of the Monetary and Financial Code and in Book III, Title I, Chapter IV of the AMF General Regulation.

3.2 – Asset management companies providing investment advice shall apply the business conduct rules pertaining to this investment service. For this purpose, there is no need to make any distinction according to whether the asset management company receives and subsequently processes the order from the investor or does not receive and process it, or to whether the investor places an order or not further to the advice received.

3.3 – Asset management companies receiving and processing subscription or redemption orders for units or shares in a UCITS or AIF shall apply:

- business conduct rules pertaining to the service of order execution for third parties in the case of a UCITS or AIF for which it is the asset management company, even when all or part of the financial management of the UCITS or AIF in question is delegated to a third party;
- business conduct rules pertaining to the service of reception and transmission of orders for third parties in the case of a UCITS or AIF for which it is not the asset management company, even when the asset management company that receives and processes the orders handles all or part of the financial management of the UCITS or AIF by delegation.

For the application of the rules referred to above, there is no need to make any distinction according to whether the asset management company receives and processes the order after providing the investor with an investment advice service or without providing any such service.

Article 4 - Authorisation to provide an investment service

4.1 – When they provide investment advice services to investors, asset management companies must be authorised to provide the said services pursuant to Article L. 532-1 of the Monetary and Financial Code.

4.2 – When they receive and process subscription or redemption orders pertaining to units or shares in a UCITS or AIF of which they are the asset management company, asset management companies shall not require any particular authorisation for the purposes of receiving or processing the said orders. In particular, they shall not be required to hold an authorisation to provide services of order execution for third parties or order reception and transmission for third parties.

4.3 – When they receive and process subscription or redemption orders pertaining to units or shares in a UCITS or AIF of which they are not the asset management company, asset management companies must be authorised to provide the service of order reception and transmission for third parties pursuant to Article L. 532-1 of the Monetary and Financial Code. As an exception, asset management companies holding an authorisation pursuant to Directive n° 2009/65/EC of 13 July 2009 and which do not also hold an authorisation pursuant to Directive 2011/61/EU of 8 June 2011 are authorised to receive and process subscription or redemption orders pertaining to shares or units in UCITS or AIFs of which they are not the asset management company within the framework of their collective management authorisation.

Article 5 - Client classification

Prior to providing either of the services referred to in 1.1, asset management companies shall classify investors pursuant to the provisions of Book III, Title I, Chapter IV, Section 2 of the AMF General Regulation, it being stated that:

- only a single classification procedure may be performed for each investor for the purposes of the two services referred to in 1.1 at the start of the relationship with them;
- for the investment advice service, the classification procedure shall classify the investor in either the non-professional investor or professional investor categories; for the service of order reception and processing, it shall classify investors in the categories of non-professional clients, professional clients or eligible counterparties;
- investors may change categories in the course of business relations for either or both of the two services referred to in 1.1, pursuant to the relevant provisions of Book III, Title I, Chapter IV, Section 2 of the AMF General Regulation;
- asset management companies are not required to classify unit or shareholders of the UCITS or AIFs of which they are the asset management company, as long as they do not provide them with either of the services referred to in 1.1 or with any other investment service.⁴

Title II - Application of certain rules specific to order reception and processing

Article 6 - Information transmission

6.1 – Pursuant to Article 314-19 of the AMF General Regulation: *“Information that is specific to a UCITS and is included in its key investor information document shall be deemed to fulfil the provisions of Articles 314-33, 314-34, 314-37 and 314-42 [of the AMF General Regulation].*

Pursuant to Article 319-5 of the AMF General Regulation, the benefit of the provisions of the preceding paragraph shall also extend to information that is specific to general purpose investment funds or alternative funds of funds and is included in their key investor information document, and that is specific to

⁴ If the asset management company is only authorised to market the fund to professional clients, it must of course have checked beforehand that the client is indeed a professional client or eligible counterparty.

general-purpose professional funds and is included in their prospectus, provided that the information meets the requirements set out in Directive 2009/65/EC of 13 July 2009.”

6.2 – In those situations not referred to in Paragraph 6.1 above, the key investor information document, the prospectus or, failing that, the documents intended to provide information to investors in the UCITS or AIF prior to making their investment, may contain the relevant information that the asset management company is required to provide to investors pursuant to Articles 314-18, 314-20, 314-32, 314-33, 314-34, 314-36, 314-37 and 314-42 of the AMF General Regulation.

Article 7 - Non-professional client agreements

7.1 – Asset management companies receiving and processing subscription and redemption orders from non-professional clients pertaining to units and shares in UCITS and AIFs of which they are not the asset management company shall sign an agreement with the investor pursuant to Articles 314-59, 314-62 and, where appropriate, 314-63 of the AMF General Regulation, it being stated that:

- this agreement may contain cross-references to the key investor information document, the prospectus or, failing this, the documents intended to provide information to investors in the UCITS or AIF in question, for any information that is already mentioned in such documents;
- this agreement may take the form of a subscription or redemption form presented in a standardised form.

7.2 - Asset management companies receiving and processing subscription and redemption orders from non-professional clients pertaining to units and shares in UCITS and AIFs of which they are the asset management company shall sign an agreement with the investor pursuant to Articles 314-59 and 314-64 of the AMF General Regulation, it being stated that:

- this agreement may contain cross-references to the key investor information document, the prospectus or, failing this, the documents intended to provide information to investors in the UCITS or AIF in question for any information that is already mentioned in such documents;
- this agreement may take the form of a subscription or redemption form presented in a standardised form.

Article 8 - Best execution obligation

For the purposes of the application of Article L. 533-18 of the Monetary and Financial Code and of the provisions indicated in Book II, Title I, Chapter IV, Section 6, Sub-Sections 2 and 3 of the AMF General Regulation, it is stated that asset management companies receiving and processing subscription and redemption orders pertaining to units or shares in UCITS or AIFs shall be deemed to have achieved best execution for the investor when orders received in accordance with the instructions indicated in the key investor information document or prospectus of the UCITS or AIF, as the case may be, are transmitted to the centraliser⁵ within date and time limits allowing them to be executed at the expected net asset value after addition or deduction, where appropriate, of the subscription or redemption fees set out in the prospectus, offer note or rules.

Article 9 - Execution policy content

9.1- When a subscription or redemption order does not concern units or shares in UCITS or AIFs that are admitted to trading on a regulated market or multilateral trading facility, meaning that the order can only be executed on the basis of the net asset value of the UCITS or AIF in question, pursuant to the second and third paragraphs of Article 411-20 and Article 422-21 and, where appropriate, Articles 411-123, 422-81, 422-128, 422-186 and 423-3 of the AMF General Regulation, the information contained in the key investor information document or prospectus of the UCITS, general-purpose investment fund,

⁵ Or, failing this, the asset management company in charge of collecting subscriptions.

venture capital fund, alternative fund of funds, real-estate collective investment scheme (OPCI), general-purpose professional fund, specialised professional fund, professional venture capital fund or professional real-estate collective investment scheme shall serve as the execution policy for the asset management company marketing it.

9.2 – The third paragraph of Article L. 533-18, III of the Monetary and Financial Code shall not apply to subscription or redemption orders pertaining to units or shares in UCITS or AIFs and sent by an investor to the asset management company that manages the UCITS or AIF in question, when the units or shares in said UCITS or AIF are not admitted to trading on a regulated market or multilateral trading facility.