



AGREEMENTS CONCLUDED BY INVESTMENT SERVICE PROVIDERS WITH NON-PROFESSIONAL CLIENTS REGARDING ASSET MANAGEMENT FOR THIRD PARTIES

Reference text: Article 314-11 of the AMF General Regulation.

Reminder of the applicable provisions

Article 58 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 (hereinafter the 'Delegation Regulation') provides that *"Investment firms providing any investment service or the ancillary service referred to in Section B(1) of Annex I to Directive 2014/65/EU to a client after the date of application of this Regulation shall enter into a written basic agreement with the client, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client. Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.*

The written agreement shall set out the essential rights and obligations of the parties, and shall include the following: (a) a description of the services, and where relevant the nature and extent of the investment advice, to be provided; (b) in case of portfolio management services, the types of financial instruments that may be purchased and sold and the types of transactions that may be undertaken on behalf of the client, as well as any instruments or transactions prohibited; and (c) a description of the main features of any services referred to in Section B(1) of Annex I to Directive 2014/65/EU to be provided, including where applicable the role of the firm with respect to corporate actions relating to client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client."

According to article 1(2) of the Delegation Regulation, *"References to investment firms shall encompass credit institutions"*.

Article 58 aforesaid also applies to asset management companies licensed to provide one or more investment service in accordance with article L532-9(VII) of the Monetary and Financial Code.

Article 314-11 of the AMF General Regulation states: *"Without prejudice to the provisions of Article 58 of the Commission Delegated Regulation 2017/565 of 25 April 2016, agreements concluded between the investment services provider and non-professional clients shall contain specific stipulations concerning the detailed information to these clients about the characteristics and modalities of the investment service provided and on the rights and obligations of the parties."*

This instruction aims to clarify the specific stipulations in agreements to provide asset management services for third parties concerning the detailed information to be provided to non-professional clients by the providers in question about the characteristics and modalities of the investment service provided and on the rights and obligations of the parties, in accordance with article 314-11 of the AMF General Regulation.

Scope of the instruction

This instruction applies to the agreements mentioned in article 314-11 of the AMF General Regulation concluded between investment services providers,¹ including asset management companies, and non-professional clients for the provision of asset management services for third parties.²

Investment services providers must comply with the provisions of said instruction³ within four months of its publication, with the exception of the last paragraph of point 5 of the single article of this instruction, which is applicable immediately.

Agreements concluded before 3 January 2018 and complying with the regulatory provisions in force before this date are deemed to have met the provisions of this instruction.

SINGLE ARTICLE – AGREEMENTS CONCLUDED WITH NON-PROFESSIONAL CLIENTS –

The management mandate contains at least the following details:

1. The identity of the person or persons with whom the agreement is established:
 - a) Where it is a legal person, the modalities whereby the provider provides information on the name of the person or persons authorised to act on behalf of said legal person;
 - b) Where it is a natural person, his/her capacity of French resident, resident of a state party to the European Economic Area or resident of a third country, along, as the case may be, with the identity of the person or persons authorised to act on behalf of said natural person;
2. The management objectives;
3. The types of financial instruments the portfolio can hold. Recourse to financial instruments is subject to compliance with the conditions for subscribing for or acquiring these instruments.

Unless agreed otherwise, authorised instruments are:

- a) The financial instruments traded on a regulated market mentioned in articles L421-1 and L422-1 of the Monetary and Financial Code or on a recognised foreign financial securities market, mentioned in article L423-1 of the same code.
 - b) UCITS under French law or foreign law approved in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 and AIFs under French law open to non-professional investors;
 - c) Financial contracts traded on a market appearing on the list drawn up by ministerial decree;
4. The modalities for keeping the client informed about the management of his/her portfolio;
 5. The term of the mandate and the modalities for renewing or terminating it. This contract may be terminated at any time by the client or provider and includes the modalities of its termination.

At the latest on the effective date of the termination, the provider draws up a portfolio statement and prepares a management report setting out the results of the management since the last portfolio statement; the provider gives all the clarifications of use to the client on the nature of the open positions;

1 Under the conditions of article 311-1 of the AMF General Regulation.

2 For the record, agreements concluded between investment services providers and non-professional clients for the provision of other investment services not covered by this instruction remain subject to the provisions of article 58 of the Delegated Regulation and article 314-11 of the AMF General Regulation. Added to compliance with these provisions are the other applicable obligations to provide information, for example the obligation to inform non-professional clients of any serious difficulty likely to influence the proper execution of their orders as soon as investment services providers report this difficulty (article 67(1)(c) of the Delegated Regulation).

3 If such is not already the case.

6. When the mandate authorises transactions in financial instruments other than those mentioned in 3. or for the purpose of leveraging, particularly transactions carried out on financial contracts, the client's special and express agreement must be given clearly stating the instruments authorised, the modalities of these transactions and the information provided to the client;
7. As the case may be, a statement that variable remuneration is acquired from the first euro of performance where the management fee comprises a variable share linked to the outperformance of the portfolio managed in relation to the management objective;
8. The confidentiality obligations on the part of the investment services provider under the professional secrecy laws and regulations in force;
9. Pricing of the service provided by the investment services provider, including the costs mentioned in article 314-26 of the AMF General Regulation, as the case may be, and the method of remuneration of the investment services provider.